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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~208~~. 18

THE NEW ORLEANS GAS LIGHT COMPANY,
APPELLANT,

vs.

THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED MAY 15, 1882.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

NEW ORLEANS GAS LIGHT COMPANY
vs.
LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 9581.

Transcript from the civil district court for the parish of Orleans. Filed Sept. 15th, 1881.

Petition. Filed May 10th, 1881.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

NEW ORLEANS GAS LIGHT COMPANY
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 3316.

Civil District Court, Parish of Orleans, Division "D."

To the honorable the civil district court of the parish of Orleans:

The petition of the New Orleans Gas Light Company, a corporation created under the laws of the State of Louisana, domi-
2 ciled in New Orleans, with respect, represents:

1. That prior to the 29th March, 1875, there existed two business or manufacturing corporations domiciled in New Orleans, and established by the statutes of the State of Louisiana, to wit, the New Orleans Gas Light Company, incorporated April 1st, 1835, by an act entitled "An act to incorporate the New Orleans Gas Light and Banking Company," and amended by an act approved 10th March, 1845, entitled "An act to amend the charter of the New Orleans Gas Light and Banking Company," and further amended by "An act to amend the charter of the New Orleans Gas Light Company," approved 15th March, 1854, by which last act the title of the corporation was changed to that of The New Orleans Gas Light Company, and further amended by act No. 66, of 1860; and the Crescent City Gas Light Company, incorporated by act No. 97, approved 20th April, 1870, as amended by act No. 106, approved July 10th, 1873.

2. That on 29th March, 1875, the business of said two corporations was that of making & vending gas lights; and that said two corporations, on 29th March, 1875, entered into an agree-
3 ment of consolidation, in writing, through their respective boards of directors, in pursuance of act No. 157, approved 12th December, 1874, entitled "An act to authorize the consolidation of business or manufacturing corporations or companies," and the owners of more than three-fifths of the capital stock of each of said corporations assented to said agreement of consolidation; and on

10th April, 1875, a certificate of the fact of such consolidation, together with a copy of the agreement of consolidation aforesaid, and the ratification hereof by the stockholders respectively of said corporations, and the name of the consolidated company was filed and recorded in the office of the secretary of State, as required by said act of 1874, and the name of the consolidated company is that of your petitioner, and your petitioner is said consolidated company, in which is vested all the rights and privileges of the two corporations aforesaid, all of which appears by a copy of the agreement of consolidation aforesaid, together with the proceedings incident to said ratification, which will be produced on the trial of this cause.

4

3. That by virtue of section 8 of the aforesaid act No. 97, approved 20th April, 1870, entitled "An act to incorporate the Crescent City Gas Light Company," and by virtue of section 2 of said amendatory act No. 106, approved July 10th, 1873, your petitioner is entitled to the sole and exclusive privilege of making and vending gas lights in the city of New Orleans, to such persons or bodies corporate who may choose to contract for the same, for the term of fifty years from 1st April, 1875.

4. That the validity and constitutionality of said acts whereby the Crescent City Gas Light Company was created and its exclusive privilego aforesaid was conferred were contested by the New Orleans Gas Light Company, created as aforesaid in 1835, and a party to said agreement of consolidation, and by the city of New Orleans; and on February 1st, 1875, the supreme court of the State of Louisiana rendered a final judgment affirming the validity of said acts and the constitutionality of said exclusive privilege, as appears by said judg-

5

ment rendered by said supreme court, in suit No. 5430 on the docket of said court, and reported in 25 Annual R., p. 139; and in said suit between the said New Orleans Gas Light Company and the Crescent City Gas Light Company the State of Louisiana, through its attorney general, intervened and joined the said Crescent City Gas Light Company in the assertion and vindication of said exclusive privilege, all of which will appear by the record of said suit, which will be produced on the trial of this cause.

5. That on the faith of said judgment said agreement of consolidation was entered into, and in the said agreement the stockholders of the said Crescent City Gas Light Company were allowed to become full paid shareholders of stock in the consolidated company to the extent of 12,500 shares of stock of $100 each, that is to say, one million two hundred and fifty thousand dollars.

6. That at the time of said consolidation the said Crescent City Gas Light Company had no property or assets whatever, ex-

6

cept its charter and the exclusive privilege aforesaid, and the only consideration given for said one million two hundred and fifty thousand dollars of full paid stock, as aforesaid, was the exclusive privilege of making and vending gas in the city of New Orleans for the said period of fifty years, which, by the agreement of consolidation aforesaid, became vested in your petitioner.

7. That the capital stock of the consolidated company aforesaid,

that is to say, of your petitioner, consists of 37,500 shares, of one hundred dollars each, or three million seven hundred and fifty thousand dollars, of which twenty-five thousand shares as full paid were by the agreement of consolidation allotted to the stockholders of the New Orleans Gas Light Company in consideration of the transfer to the consolidated company of all the property of the said New Orleans Gas Light Company mentioned and described in article 8 of the said agreement of consolidation, and certificates of stock were issued by the consolidated company pursuant to the terms of the agreement of consolidation, and their market value exceeds one hundred dollars per share.

7 8. That on 25th January, 1881, the council of the city of New Orleans, at the instigation of one H. S. Jackson, Watson Van Benthuysen, and their confederates hereinafter mentioned, passed an ordinance authorizing said Jackson and Van Benthuysen and their said confederates, for the period of fifty years, to lay, at their own expense, any and all necessary mains, pipes, and conduits in and along the streets, alleyways, sidewalks, bridges, avenues, parks, gardens, and other places within the limits of the city of New Orleans, for the purpose of supplying all buildings, erections, etc., when needed, with gas, and to that end said Jackson and Van Benthuysen and their said confederates were authorized to enter upon any and all said places and break the surface thereof and make the necessary excavations thereon, when the same might be required for the purposes aforesaid. One of the conditions on which said privilege was given to said Jackson and Van Benthuysen and

8 their said confederates was that they should supply the city of New Orleans and its inhabitants with illuminating gas of not less than twenty candle power at a price not greater than two dollars and fifty cents per one thousand cubic feet of gas consumed, less ten per cent. for prompt payment by private consumers.

The said ordinance also authorized said Jackson and Van Benthuysen to transfer said privilege to a corporation to be organized to carry into effect the stipulations and conditions imposed on said Jackson and Van Benthuysen contained in said ordinance.

The said ordinance also authorized said Jackson and Van Benthuysen to make all necessary connections between the mains laid in the streets to the meters in the houses of the consumers of gas. The said Jackson and Van Benthuysen were required to accept the provisions of said ordinance within ninety days from its pass-

9 age, and were also required to give bond in the sum of $20,000, with approved sureties, for the faithful performance of the obligations imposed on them by said ordinance, one of which was the payment of $20,000 in money to the city of New Orleans as a consideration for the privilege granted to them, all of which will more fully appear by a duly certified copy of said ordinance to be produced on the trial of this cause.

9. That said Jackson and Van Benthuysen accepted said ordinance and furnished said bond in compliance with the terms of said ordinance; and thereupon, having organized themselves, with their said confederates, into a corporation by a notarial act passed on 10th

April, 1881, before George M. Christy, notary public, in this city, under the name of the Louisiana Light and Heat Producing and Manufacturing Company, they, on the 23d April, 1881, by notarial act, transferred to said corporation the privileges and rights
10 conferred on them by said ordinance, all of which appears by a duly certified copy of said act of incorporation, and of said act of transfer, which will be produced on the trial of this cause.

10. That all the subscribers to said act of incorporation were, from the commencement, the confederates of said Jackson and Van Benthuysen in instigating and promoting the passage of said ordinance, with the view of organizing a corporation to carry its provisions into effect.

11. That it does not appear on the face of said act of incorporation where the operations of said company are to be conducted, and, therefore, so far as its operations beyond the limits of the city of New Orleans are concerned, said corporation might have lawful existence, and the same might be said as to all the objects professed in said charter, except the manufacturing and sale of illuminating gas or the manufacture and furnishing of gas for illuminating purposes within the limits of the city of New Orleans to the said
11 city and its inhabitants, and the sale thereof.

12. That the general laws relative to the organization of corporations do not authorize the creation of a corporation to manufacture and sell gas lights within the limits of the city of New Orleans to said city or its inhabitants, as such general laws in no manner affect or impair or repeal the special acts No 99, of 1870, and No. 106, of 1873, and are to be construed in subordination thereto.

13. That said Jackson, Van Benthuysen, and their said confederates, subscribers, as aforesaid, to said act of incorporation, give out and avow their determination to proceed forthwith to the construction of works and laying mains and pipes in this city, for the purpose of manufacturing, distributing, and selling illuminating gas to the city of New Orleans and its inhabitants, claiming the right to do so by virtue of said ordinance and the assignment thereof
12 to said corporation, created as aforesaid.

The said Jackson and Van Benthuysen and their associates give out and publicly assert that the exclusive privilege of your petitioner, under the acts aforesaid, in no manner deters them from proceeding to execute the provisions of said ordinance as to the manufacture and sale of illuminating gas in this city, pretending that said exclusive privilege has been repealed or cancelled by the provisions of article No. 258 of the constitution of Louisiana, adopted in the year 1879.

That said constitution, in so far as it attempts or undertakes to abolish or repeal the exclusive privilege conferred on petitioner by said acts No. 97, of 1870, and No. 106, of 1873, or in any manner impair the same, is null and void, inasmuch as said acts conferring said privilege constituted a contract between the State of Louisiana and your petitioner which is protected by the Constitution of the United States, which provides that no State shall pass any
13 law impairing the obligation of a contract, and by the four-

teenth amendment of said Constitution, which declares that no State shall deprive any person of his property without due process of law.

14. That since the consolidation aforesaid your petitioner has been regularly assessed by the State of Louisiana on its capital stock of three and three-quarter million dollars, and the franchise of the Crescent City Gas Company at a valuation of one million and a quarter of dollars was included in said assessment; and your petitioner, as owner of said franchise, by virtue of said consolidations, was compelled to pay taxes thereon to the State, as appears from the decree of the supreme court, rendered in April, 1879, in the case of this petitioner against the board of assessors, reported in 31 Annual Reports, p. 475.

15. That the said New Orleans Gas Light Co., as it existed prior to said consolidation, claiming an extension of its charter, by
14 virtue of said act No. 66 of 1860, within ten days from the time said judgment of the supreme court of Louisiana was rendered in said suit between it and the said Crescent City Gas Light Co., sued out a writ of error to the Supreme Court of the United States, & at the same time gave bond and security according to law, whereby said judgment was superseded, and, pending said writ of error and supersedeas, said agreement of consolidation was entered into and carried into effect, and in consequence of said consolidation & in pursuance of a stipulation to that effect, signed by the counsel of the consolidating companies aforesaid, the said writ of error was dismissed long after the 10th of April, 1875.

16. That the said ordinance of the city of New Orleans attempting to confer on said Henry S. Jackson, said Van Benthuysen, and their confederates, as aforesaid, the franchise or right, for the period of fifty years, to dig up the streets, lay down gas-pipes, erect lamp-
15 posts, and carry on the business of lighting the streets and houses of said city with illuminating gas, is null and void; first, because said city has no authority to confer such a franchise; second, because said ordinance is violative of the contract by which the State has granted the exclusive privilege aforesaid to the Crescent City Gas Light Company; third, because the right to dig up the streets and other public places, and the sidewalks, to made connections with private houses, for any business purpose, for the period of fifty years, is a franchise which the city cannot grant.

17. That the aforesaid illegal pretentions of said Henry S. Jackson and the said Van Benthusen and their said confederates, the organizers of said corporation styled the Louisiana Light and Heat Producing and Manufacturing Company, are injurious to your petitioner, and throw a cloud on its title to the exclusive privi-
16 lege aforesaid, and have already diminished the market value of its stock to the extent of three hundred thousand dollars; and the said damage is a continuing and progressive damage, which will go on increasing and assuming larger dimensions in proportion to the extent to which the defendants herein are permitted to disregard the rights of your petitioners by the construction of works to

supply the city of New Orleans and its inhabitants with illuminating gas.

18. That the illegal pretensions of the defendants have seriously damaged the value of the exclusive franchise aforesaid, which, by the terms of the consolidation agreement aforesaid, was fixed at one and one-quarter million dollars, and which is really worth that sum; that the said damage already done is not less than three hundred thousand dollars, and is of a nature which increases from day to day, and in proportion to the extent to which the defend-
17 ants will be allowed to disregard the rights of petitioner and proceed with the construction of works to carry into effect their illegal purposes.

19. That the said Louisiana Light and Heat Producing and Manufacturing Company, and the members of the board of directors resident in this city, to wit, Watson Van Benthu-sen, Ulysses Marinoni, B. Laplace, A. Marguez, James J. Reis, John J. Gidiere, Frederick N. Thayer, Henry Gardes, and Samuel M. Todd, are about to avail themselves of said ordinance of the city of New Orleans, and to that end to dig up the streets and public places and sidewalks of said city for the purpose of laying pipes and mains, and making connections through which to supply and sell illuminating gas to the said city and its inhabitants, and to construct work- in said city for the manufacture and sale of illuminating gas to the said city and inhabitants thereof.

18 That the digging up said streets and public places and sidewalks, and the making said connections, and the construction of works as aforesaid, for the purposes aforesaid, are acts of infringement of the exclusive privilege aforesaid granted to your petitioner, and will produce an irreparable injury to the extent, if persisted in, of destroying said exclusive franchise and the vested rights of petitioners.

Wherefore petitioner prays, the annexed bond and affidavit considered, that a writ of injunction issue restraining and prohibiting the said Louisiana Light and Heat Producing and Manufacturing Company, and its said board of directors, from digging up any of the streets, alleys, avenues, parks, or public places, or sidewalks, for the purpose of laying pipes, mains, or conduits, through which to supply gas to the inhabitants of the said city of New Orleans, and from making connections between said pipes and mains and conduits in said city for the purpose of manufacturing, distribut-
19 ing and selling illuminating gas to the city of New Orleans or its inhabitants, and from asserting or maintaining, or pretending that the said defendant company, or any other person than your petitioner, is empowered or authorized to manufacture and vend illuminating gas to the city of New Orleans, or its inhabitants, until after the lapse of fifty years from 1st April, 1875, and from assailing, by word or deed, the sole and exclusive privilege of your petitioner, conferred by said acts No. 97 of 1870 and No. 106 of 1873, to make and to sell gas lights to the city of New Orleans, and its inhabitants, for the term of fifty years from 1st April, 1875, and that the said Louisiana Light and Heat Producing and Manufacturing Company,

through its president, the said Watson Van Benthuysen, and also the said Van Benthuysen, individually, and Ulysses Marinoni, B. Laplace, A. Marguez, James J. Reis, John J. Gidiere, Frederick N. Thayer, Henry Gardes, and Samuel M. Todd, who reside
20 in New Orleans, be cited, and, after due proceedings, that the said defendants be condemned *in solido* to pay to petitioner damages to the extent of three hundred thousand dollars, and such further other damage and loss which it may sustain in the interval between the present time and the day of trial, and that the said injunction be made perpetual, and your petitioner be decreed to be the owner of the exclusive privilege aforesaid, conferred by said acts No. 97 of 1870 and No. 106 of 1873, for the period of fifty years from April, 1st, 1875; and petitioner prays for costs and all general and equitable relief.

(Signed) T. J. SEMMES & PAYNE,
Of Counsel for Pl'ffs.

James Jackson, being duly sworn, says: That he is president of the New Orleans Gas Light Company, the plaintiff in the foregoing petition, and that the facts set forth in said petition are true.

(Signed) JAMES JACKSON, *Pres't.*

21 Sworn to and subscribed before me, notary, this 9th May, 1881.

(Signed) CHAS. T. SONIAT, *Not. Pub.*

Order.

Let the d'f'd't show cause, on Friday, the 13th May, 1881, at eleven o'clock a. m., why the injunction prayed for should not issue. The allegations being taken for true

N. O., May 10th, 1881.

(Signed) N. H. RIGHTOR, *Judge.*

Citation on the Louisiana Light & Heat Producing and Manufacturing Company, through its President, Watson Van Benthuysen, and Watson Van Benthuysen individually.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MAN'F'G CO. } No. 3316.

To the Louisiana Light & Heat Producing & Manufacturing Co., through its president, Watson Van Benthuysen, and Watson Van Benthuysen individually:

22 You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this

citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Hon. A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th day of May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk*

Sheriff's Return on above Citation Filed May 13th, 1881.

Received May 10th, 1881, after 3 p. m., and on the 11th day of May, 1881, I served a copy of the within citation and accompanying petition on La. Light & Heat Producing and Man'f'g Co., defendant herein, through its president, Watson Van Benthuysen, and Watson Van Benthuysen individually in person. Ret. same day.

(Signed) J. E. SIEKFORT, *D'y Sheriff.*

Sheriff's fees, $1.50.

23 *Citation on Ulysses Marinoni.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MAN'F'G CO. } No. 3316.

Mr. ULYSSES MARINONI, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th day of May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk.*

Sheriff's Return on above Citation. Filed May 13th, 1881.

24 Received May 10th, 1881, after 3 p. m., and on the 11th May, 1881, I served a copy of the within citation and accompanying petition personally on Ulysses Marinoni, the defendant herein. Returned same day.

(Signed) P. A. McINTYRE, *Deputy Sh'ff.*

Sh'ff's fee, $1.50.

Citation on John J. Gidiere.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LA. LIGHT & HEAT PRODUCING AND MAN'F'G CO. } No. 3316.

Mr. JOHN J. GIDIERE, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of New Orleans within ten days from the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th May, in the year of our Lord, 1881.

25 (Signed) E. A. LUMINAIS, *Deputy Clerk.*

Sheriff's Return on above Citation. Filed May 13th, 1881.

Received May 10th, 1881, after 3 p. m., and the 11th day of May, 1881, I served a copy of the within citation and accompanying petition personally on John J. Gidiere, herein named.

Ret. same day.

(Signed) J. E. SIEKFORT, *D'y Sheriff.*

Sheriff's fee, $1.50.

Citation on Samuel L. Todd.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LA. LIGHT AND HEAT PRODUCING AND MAN'F'G CO. } No. 3316.

Mr. SAMUEL L. TODD, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the
26 civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th day of May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk.*

Sheriff's Return on the above Citation. Filed May 13th, 1881.

Received May 10th, 1881, after 3 p. m., and on the 11th day of May, 1881, I served a copy of the within citation and accompanying petition personally on Samuel M. Todd, herein named.

Ret. same day.

(Signed) J. E. SIEKFORT, *Dy Sheriff.*

Citation on A. Marquez.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the city of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MAN'F'G CO. } No. 3316.

27 Mr. A. MARQUEZ, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, T. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th day of May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk.*

Sheriff's Return on above Citation. Filed May 13th, 1881.

Received May 10th, 1881, after 3 p. m., and on the 11th day of May, 1881, I serve a copy of the within citation, and accompanying petition personally on Mr. A. Marquez, defendant herein.

Returned same day.

(Signed) FRANK ROIG, *Dy Sheriff.*

28 Sheriff's fees, $1.50.

Citation on Frederick N. Thayer.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LA. LIGHT & HEAT PRODUCING AND MAN'F'G CO. } No. 3316.

Mr. FREDERICK N. THAYER, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver

your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk.*

29 *Sheriff's Return on the above Citation. Filed May 13th, 1881.*

Received May 10th, 1881, after 3 p. m., and the 11th day of May, 1881, I served a copy of the within citation and accompanying petition personally on Frederick N. Thayer, herein named.

Ret. same day.

(Signed) J. E. SIEKFORT, *D'y Sheriff.*

Sheriff's fees, $1.50.

Citation on B. Laplace.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MAN'F'G CO. } No. 3316.

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A.
30 Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th day of May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk.*

Sheriff's Return on the above Citation. Filed May 13th, 1881.

Received May 10th, 1881, after 3 p. m., and on the 11th day of May, 1881, I served a copy of within citation and accompanying petition on Mr. B. Laplace, defendant herein, by leaving the same at his domicile, corner of Elysian Fields and Decatur streets, in the hands of Mr. Alf. Laplace, a person apparently above the age of 14 years, living and residing in said domicil, whose name and other facts connected with this service I learned by interrogating Mr. Alf. J. Laplace; said defendant being absent from his domicil at the time of said service.

Returned same day.

(Signed) FRANK ROIG, *D'y Sheriff.*

Sheriff's fee, $1.50.

31 *Citation of James J. Reiss.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MAN'F'G CO. } No. 3316.

MR. JAMES J. REISS, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th day of May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk.*

Sheriff's Return on the above Citation. Filed May 13th, 1881.

32 Received May 10th, 1881, and on the 11th of May, 1881, I served a copy of the within citation and accompanying petition, personally, on James J. Reiss, the defendant herein.

Returned same day.

(Signed) P. A. McINTYRE, *Dep. Sh'ff.*

Sh'ff fee, $1.50.

Rule Nisi on Defendants.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT AND HEAT PRODUCING & MANUFACTURING COMPANY. } No. 3316.

The State of Louisiana to the Louisiana Light and Heat Producing and Manufacturing Company, through its president, Watson Van Benthuysen, and Watson Van Benthuysen individually, and Ulysses Marinoni, B. Laplace, A. Marquez, James J. Reiss, John J. Gidiere, Frederick N. Thayer, Henry Gardes, and Samuel M. Todd, New Orleans, Greeting:

You are hereby commanded, in the name of the State of Louisiana and of the civil district court for the parish of Orleans,
33 to show cause, on Friday, the 13th day of May, 1881, at 11 o'clock a. m., why the injunction prayed for should not issue, the allegations being taken for true.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of our said court, this 10th day of May, in the year of our Lord one thousand eight hundred and eighty-one, and in the one hundred and fifth year of the Independence of the United States.

(Signed) E. A. LUMINAIS, *D'y Clerk.*

Sheriff's Return on Rule Nisi. Filed May 13th, 1881.

Received May 10th, 1881, after 3 p. m., and on the 11th of May, 1881, I served a copy of the within rule *nisi* personally on James J. Reiss, the defendant herein.

Returned same day.

(Signed.) P. A. McINTYRE, *Deputy Sheriff.*

Sheriff's fee 50c.

And on the 11th May, 1881, I served a copy of the within *nisi* on Ulysses Marinoni, the defendant herein.

Returned same day.

34 *Returned same day.*

(Signed) P. A. McINTYRE, *Deputy Sheriff.*

Sheriff's fee, 50c.

And on the 11th day of May, 1881, I served a copy of the within rule *nisi* on the La. Light & Heat Producing and Manufacturing Co., defendants herein, through Watson Van Benthuysen, its president, and Watson Van Benthuysen individually in person, and on the same day and date I served a copy of the within rule *nisi* personally on Samuel M. Todd, herein named, and on the same day and date I served a copy of the within rule *nisi* personally on Frederick M. Thayer, herein named, and on the same day and date I served a copy of the within rule *nisi* personally on John J. Gidiere, herein named.

Ret. same day.

(Signed) J. E. SIEKFORT, *Deputy Sheriff.*

And on the 11th day of May, 1881, I served a copy of within rule *nisi* personally on A. Marquez, defendant herein.

Returned same day.

35 (Signed) FRANK ROIG, *Deputy Sheriff.*

And on the 1st day of June, 1881, I served a copy of the within rule *nisi* personally on Henry Gardes, herein named.

Ret. same day.

(Signed) J. E. SIEKFORT, *D'y Sheriff.*

Sheriff's fee, 50c.

And on the 11th day of May, 1881, I served a copy of within rule *nisi* on Mr. B. Laplace, defendant herein, by leaving the same at his domicil, cor. Ely'n Fields and Decatur streets, in the hands of Mrs. Alt. J. Laplace, a person apparently over the age of 14 years, living

and residing in said domicil, whose name and other facts connected with this service I learned by interrogating Mrs. Alf. J. Laplace, said defendant being absent from his domicil at time of said service.

Returned same day.

(Signed) FRANK ROIG, *D'y Sheriff.*

Continuance. Extract from the Minutes of Division D.

36 FRIDAY, *May 13th*, 1881.

Present: Hon. N. H. Rightor, judge.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 3316.

The rule *nisi* taken in this case, and assigned for trial on this day, was ordered to be continued to Friday next, 20th instant, at 11 a. m.

Continuance. Extract from the Minutes.

FRIDAY, *May 20th*, 1881.

Present: Hon. N. H. Rightor, judge.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 3316.

These rules assigned for hearing on this day were ordered to be continued to Friday next, 27th inst., at 11 o'clock a. m.

Exceptions. Filed May 23d, 1881.

37 Civil District Court for the Parish of Orleans.

NEW ORLEANS GAS LIGHT COMPANY
vs.
LA. LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 3316.

And now come into court the Louisiana Light and Heat Producing and Manufacturing Company, Watson Van Benthuysen, U. Marinoni, B. Laplace, A. Marqueze, James J. Reiss, John J. Gidiere, Fred. N. Thayer, Henry Gardes, and Samuel M. Todd, defendants herein, and except to plaintiff's petition, and for cause thereof show:

First. That the plaintiff is not a corporation, and is without capacity to maintain this action.

Second. That the Crescent City Gas Light Company was not a business or manufacturing corporation or company within the contemplation of act No. 157, approved December 12, 1874, on the 29th March, 1875, the time of its alleged union with the New Orleans

Gas Light Company, nor was said Crescent City Gas Light
38 Company a business or manufacturing company or corporation on the 9th April, 1875.

Third. That the charter of the New Orleans Gas Light Company expired by limitation on the 1st April 1875; that the assent of three-fifths of the owners of its capital stock was a condition precedent to its union and amalgamation with any other corporation, and no such assent was given; but that pretended assent of said shareholders, alleged in plaintiff's petition, was not attempted to be given until the 9th April, 1875, after the dissolution of said company by the expiration of its charter, when the extinct corporation and those who were its shareholders when the charter expired were utterly incapable of giving the assent required by the act.

Fourth. That the act No. 157 of 1874 professed to authorize the consolidation of two or more subsisting corporations without changing or extending the charters of either, each corporation to
39 possess the advantages conferred by said consolidation during the existence of its charter, and no longer; that the charter of the New Orleans Gas Light Company expired on the 1st April, 1875; and hence the consolidation authorized by that statute would have ceased at that date, if any had previously been effected, and said so-called consolidation confers upon the plaintiff no capacity or right to appear in court.

Fifth. That the franchises of the Crescent City Gas Light Company were conferred upon it by the Legislature, in consideration of the erection by it of certain works for the manufacture of gas, which said works for the manufacture of gas *which said works* were to be complete and in condition to supply all the gas needed for consumption by the city of New Orleans within ten years from the passage of the act, to wit, the 20th April, 1870, under pain of absolute nullity of its charter; and the pretended agreement of consolidation alleged in plaintiff's petition whereby the Cres-
40 cent City Gas Light Company was sought to be dispensed from the fulfilment of the terms on which its chartered rights were granted, is *ultra vires*, a violation of its charter, in contravention of public policy, and is void, null, and of no effect whatsoever.

Sixth. That under act No. 157 of 1874, for the consolidation of corporations, no exclusive privilege, if any ever existed in favor of either company (which is not admitted and is denied), is continued or transferred to or possessed by the pretended consolidated company.

Seventh. That the act No. 157 of 1874 did not profess for it object or objects to extend the charter of any corporation subsisting at the date of the act, or to blend subsisting corporations, so as to enable any body corporate after the expiration of its charter to become and continue a member and enjoy the privileges of any new corporation; and if such objects can be deemed to be intended or announced by said act, the act itself in respect to such objects
41 is void and null, because in violation of the 114th article of the constitution of 1868, repeated in article 29 of 1879.

Eighth. That even if any monopoly to make and vend gas in the

city of New Orleans ever existed in plaintiff, or the companies under which it claims (which is not admitted and is expressly denied), then said exclusive privilege has been revoked and withdrawn by article 258 of the constitution of 1879, which completely abolished the monopoly features contained in the charters of all corporations except railroad companies.

Wherefore defendants pray that these exceptions be sustained and plaintiff's petition be rejected at its own cost, and for general relief.

(Signed) MILLER, FINNEY & MILLER,
JOHN M. BONNER,
E. HOWARD McCALEB,
Att'ys for Defendants.

Motion to Fix Exception. Filed May 23d, 1881, and as Entered on the Minutes of Division "D" on May 23, 1881.

42 Civil District Court.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LA. LIGHT & HEAT PRODUCING & MAN'F'G CO. } No. 3316.

On motion of Miller, Finney & Miller, John M. Bonner, and E. Howard McCaleb, of counsel for defendants herein, and on suggesting that defendants have filed exceptions herein—

It is ordered that the exceptions herein filed be fixed for trial and argument on Friday, May 27, 1881, at 11 a. m., and that the plaintiff be duly notified hereof.

Notice of Trial.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division D.

N. O. GAS LIGHT CO.
vs.
LA. LIGHT & HEAT PRODUCING AND MANUFACTURING CO. } No. 3316.

To Messrs. T. J. SEMMES & PAYNE,
Attorney and Counselor at Law, New Orleans:

43 SIR: Please to take notice that the exceptions filed in this case has been fixed for trial on Friday, 27th day of May, 1881.

New Orleans, May 24th, 1881.

(Signed) PHILIP POWER, JR.,
Deputy Clerk.

Sheriff's Return on Notice. Filed May 26th, 1881.

Rec'd May 24th, 1881, and on the 24th day of May, 1881, I served

a copy of within notice of trial on Semmes & Payne, att'ys herein, through J. C. Payne, a member of said firm, in person.

Ret. same day.

(Signed) H. FEEHAN, *D'y Sheriff.*

Sh'ff fee, 50c.

Motion for Subpœna Duces Tecum. Filed May 24th, 1881, and as entered on the minutes of Division D May 24th, 1881.

Civil Dfstrict Court.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING CO. } No. 3316.

44 On motion of John M. Bonner, E. Howard McCaleb, and Miller, Finney & Miller, of counsel for defendant—

It is ordered that plaintiff do produce in court, on Friday morning, May 27, 1881, at 11 o'clock a. m. on the trial of the exceptions herein, its minute book or books showing and containing—

(1.) The action of the plaintiffs prior to April 1st, 1875, relative to the alleged consolidation of the plaintiff with the Crescent City Light Gas Company under the act No. 157 of 1874.

(2.) The action or proceedings subsequent to said April 1st, 1875, of those who were shareholders of the New Orleans Gas Light Company on April 1st, 1875, with reference to said alleged consolidation.

Writ of Subpœna Duces Tecum.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
LA. LIGHT & HEAT PRODUCING AND MANUFACTURING CO. } No. 3316.

The State of Louisiana to the New Orleans Gas Light Com-
45 pany, Greeting:

You are hereby commanded, in the name of the State of Louisiana and of the civil district court for the parish of Orleans, to produce in open court on 27 day of May, 1881, at 11 o'clock a. m., or on any other day, to which this case may be continued, the following, to wit:

Your minute book or books showing and containing—

1st. The action of the plaintiffs prior to April 1st, 1875, relative to the alleged consolidation of the plaintiff with the Crescent City Gas Light Company under act No. 157 of 1874.

2d. The action or proceedings subsequent to said April 1st, 1875, of those who were shareholders of the New Orleans Gas Light Company on April 1st, 1875, with reference to said alleged consolidation.

And herein fail not under penalty of the law.

46 Witness the Honorable Nicholas Henry Rightor, judge of our said court, division "D," this 25th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

(Signed) PHILIP POWER, JR.,
Deputy Clerk.

Sheriff's Return on Writ of Subpœna Duces Tecum. Filed May 26th, 1881.

Rec'd May 25th, 1881, and on the 25th day of May, 1881, I served a copy of the within writ of *subpœna duces tecum* on the New Orleans Gas Light Company, plaintiff herein, through Jos. Jackson, its president, in person.

Ret. same day.

(Signed) J. E. SIEKFORT, *Dy Sheriff.*

Sh'ff's fee, 50c.

Continuance. Extract from the Minutes of Division "D."

FRIDAY, *May 27th*, 1881.

Present: Hon. N. H. Rightor, judge.

NEW ORLEANS GAS LIGHT COMPANY
vs.
47 LOUISIANA HEAT PRODUCING AND MANUFACTURING CO. } No. 3316.

The exceptions filed in this case, and assigned for this day, are ordered to be continued to Friday June 3d, 1881, at 11 o'clock a. m.

Continuance of Rule Nisi. Extract from the Minutes of Division "D."

SATURDAY, *May* 28, 1881.

Present: Hon. N. H. Rightor, judge.

NEW ORLEANS GAS LIGHT COMPANY
vs. } No. 3316.
LOUISIANA HEAT PRODUCING AND MANUFACTURING CO.

The rule *nisi* herein taken came up this day again for argument.

T. J. Semmes & Payne and J. A. Campbell, for plaintiff; Miller, Finney & Miller, J. M. Bonner, and E. Howard McCaleb, for defendants.

After hearing further pleadings and argument of counsel, said rule was ordered to be continued to Friday next, June 3d, at 11 o'clock, for further argument.

48 *Continuance of Rule Nisi.*

FRIDAY *May 27th*, 1881.

Present: Hon. N. H. Righter, judge.

NEW ORLEANS GAS LIGHT COMPANY
vs.
LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 3316.

The rule *nisi* herein taken came up this day for trial.

T. J. Semmes & Payne and John A. Campbell, for plaintiff; Miller, Finney & Miller, E. H. McCaleb, and John M. Bonner, for defendants.

After hearing pleadings and arguments of counsel, said rule was ordered to be continued for further argument until to-morrow, 28th inst., at 11 o'clock a. m.

Citation on Henry Gardes.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

NEW ORLEANS GAS LIGHT CO.
vs.
LA. LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 3316.

To HENRY GARDES, N. O.:

49 You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans within ten days from the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 10th day of May, in the year of our Lord 1881.

(Signed) E. A. LUMINAIS, *Deputy Clerk.*

Sheriff's Return on above Citation. Filed June 3d, 1881.

Received May 10th, 1881, after 3 p. m., and on the first day of June, 1881, I served a copy of the within citation and accompanying petition personally on Henry Gardes herein named.

Ret. same day.

(Signed) J. E. SICKFORT, *D'y Sheriff.*

Sheriff's fee, 1.50.

50 *Continuance of Rule Nisi. Extract from the Minutes, Division "D."*

FRIDAY, *June 3d*, 1881.

Present: Hon. N. H. Rightor, judge.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MAN'F'G COMPANY. } No. 3316.

The rule *nisi* herein taken came up this day again for argument.

T. J. Semmes & Payne and John A. Campbell, for plaintiff.

Miller, Finney & Miller, E. H. McCaleb & J. M. Bonner, for defendants.

After hearing further argument of counsel, said rule was ordered to be continued for further argument until to-morrow, 4th inst., at 12 o'clock m.

Rule Nisi Submitted. Extract from the Minutes of Division "D."

FRIDAY, *June 10th*, 1881.

Present: Hon. N. H. Rightor, judge.

NEW ORLEANS GAS LIGHT COMPANY
51 *vs.*
LOUISIANA LIGHT & HEAT PRODUCING & MAN'F'G CO. } No. 3316.

The rule *nisi* herein taken came up again this day for argument.

T. J. Semmes & Payne and John A. Campbell for plaintiffs.

Miller, Finney & Miller, E. H. McCaleb, and J. M. Bonner for defendants.

After hearing further pleadings and argument of counsel, said rule being submitted, the court took the same under advisement.

Notice of Trial.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "D."

N. O. GAS LIGHT CO.
vs.
LA. LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 3316.

To Messrs. T. J. SEMMES & PAYNE,
Attorneys and Counsellors-at-Law, New Orleans.

52 SIR: Please to take notice that the exception filed in this case has been fixed for trial on Friday, 17th day of June, 1881, and that the *subpœna duces tecum* herein issued is made returnable on that day and hour.

New Orleans, June 13th, 1881.

(Signed) PHILIP POWER, JR.,
Deputy Clerk.

Sheriff's Return on above Notice. Filed June 14th, 1881.

Rec'd June 13th, 1881, and on the 13th day of June, 1881, I served a copy of within notice of trial on Semmes & Payne, att'ys herein, through J. C. Payne, a member of said firm, in person.

Ret. same day.

(Signed) H. FEEHAN, *D'y Sh'ff.*

Sheriff fee, 50c.

Continuance of Exception. Extract from the Minutes, Division "D."

FRIDAY, *June 17th*, 1881.

Present: Hon. N. H. Rightor, judge.

NEW ORLEANS GAS LIGHT COMPANY
vs.
53 LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 3316.

The exceptions filed in this case and assigned for trial on this day are ordered to be continued to Friday next, 24th inst., at 11 o'clock a. m.

Motion to Fix Exceptions. Filed June 13th, 1881, and Entered on the Minutes of Division "D," June 13th, 1881.

Civil District Court for the Parish of Orleans.

N. O. GAS LIGHT CO.
vs.
LA. LIGHT AND HEAT PRODUCING AND MANUFACTURING CO. *et al.* } No. 3316.

On motion of Miller, Finney & Miller, J. M. Bonner, and E. Howard McCaleb, Esq'rs, of counsel for defendants,—

It is ordered by the court that the exception herein filed by defendants be fixed for trial for Friday next, June 17th, 1881, at 11 o'clock a. m.; that the *subpœna duces tecum* heretofore issued
54 herein be made returnable for said day and hour, and that plaintiff be notified hereof.

Reasons for Judgment. Filed June 17th, 1881.

N. O. GAS LIGHT CO.
vs.
LA. LIGHT & HEAT PRODUCING & MANUFACTURING CO. } Division "D."

The conclusions I have adopted in relation to the effect of article 258 of the constitution of 1879, make it unnecessary to determine several difficult points of law presented in this case.

That constitution announces that "the monopoly features in the charter of any corporation now existing in the State, save such as

may be contained in the charter of railroad companies, are hereby abolished."

It is in virtue of the monopoly features of its charter that plaintiff claims the right to restrain the defendant from making & selling artificial light. If, by legitimate sovereign act, the plaintiff has been bereft of its exclusive privileges in this matter, it
55 has no ground of complaint against d'f'd's.

Plaintiff invokes the Constitution of the United States, which guarantees that no State shall pass any law impairing the obligation of a contract, nor deprive any person of his property without due process of law, and it charges that article 258 of the Constitution of Louisiana, by taking away its exclusive right to make and sell gas light, impairs the obligation of the contract evidenced by the charter, and thereby deprives it of property without due process of law.

If the charge is just, the article of the Louisiana constitution must be reputed as not written and plaintiff's monopoly be upheld.

It is to be observed that as regards the question under consideration a State Legislature and a State Sovereign Convention stand on the same footing. A convention can no more take away the chartered privilege lawfully granted than a State Legislature can
56 take it away, if in the nature of things it is susceptible of alienation. Both may revoke at will any privilege not susceptible by nature of permanent alienation. Their powers in this respect are exactly equal under the American Constitution.

The question then, is, whether the State Legislature, by granting to plaintiff the exclusive privilege of making and selling gas, bound the State by such an irrevocable contract as is guaranteed by the Federal Constitution and so as to deprive all future legislatures of the power to withdraw the grant prior to the time fixed by its charter or other legislative investiture.

My judgment is that no legislative assembly has power to bind its successors in such a matter. My judgment is that the legislative power could, at any time, from the date of its creation, have stripped the gas company of all its exclusive privileges without in the slightest degree impairing the obligation of a constitutional contract.

57 These are elementary principles. The government cannot strip itself of the power of governing. It cannot abdicate, it cannot suicide; none of its vital functions can for one instant be stricken with paralysis. It is bound to the rock of power by a chain which its own will cannot breaken or weaken, and which no rust of prescription can corrode.

The text-writers and all judges are unanimous that its most vital quality consists in an impotency to part with what they have agreed to call the police power. When the Legislature grants any charter or makes any law on matters of governmental or police control, the beneficiaries of such charter or law hold it subject to instantaneous defeasance at the will of the sovereign, and when individuals or corporations plead such chartered rights, the sovereign may answer by peremptory exception, framed in the very words which the

greatest of poets has placed on the lips of the greatest of
58 men: "Always I am Cæsar."

It is difficult to say what the police power is. But it is to my mind as clear as daylight that the matter of illuminating the houses and streets and markets and squares and temples and citadels of great cities falls under the domain of the police power. It concerns health, it concerns morals, it concerns the efficient execution of the criminal laws, it concerns the liberty of the citizen, it concerns the progress of science and of all the arts. The Chief Justice of the United States—a man as great in mind as he is high in station—said, in the case of Stone *vs.* Mississippi, (XI Otto, 814,) "That many attempts had been made to define the police power, but none with entire success. It is always easier to determine whether a particular case comes within the general scope of the power than to *to* give an abstract definition of the power itself, which will be in all
59 respects accurate." "All agree that the Legislature cannot bargain away the police power of the State."

If the vast and varied interests involved in the question of the supply and artificial control of artificial light in our cities are not strictly and beyond a doubt within the domain of inalienable empire, then the police power is an unmeaning phrase, and the jewel of sovereignty can be gambled away or pledged in any pawn-shop, and nothing short of bloody revolution can redeem them.

The rule is discharged.

Rule Nisi Discharged. Extract from the Minutes of Division "D."

FRIDAY, *June* 17*th*, 1881.

Present: Hon N. H. Rightor, judge.

NEW ORLEANS GAS LIGHT CO.
vs.
LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 3316.

60 In the matter of the rule *nisi* herein taken and submitted to the court for adjudication, for the reasons assigned in the written opinion of the court, this day delivered and filed—

It is ordered that said rule be discharged, and accordingly that the injunction herein prayed for be refused.

Petition for Removal. Filed June 20*th*, 1881.

Civil District Court for the Parish of Orleans.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING CO. *et al.* } No. 3316.

To the honorable the civil district court for the parish of Orleans:

The petition of the New Orleans Gas Light Company, the plaintiff

in the above-entitled suit, respectfully shows unto this honorable court: That the matter and amount in dispute in the above-entitled suit exceeds, exclusively of costs, the sum of or value of five thousand dollars, $5,000.

61 Your petitioner shows that the said suit is one arising under the Constitution of the United States in this, to wit: That your petitioner claims the exclusive privilege of making and vending gas lights in the city of New Orleans to such persons or bodies corporate who may choose to contract for the same for the term of fifty years from the 1st of April, 1875; that said claim is based on a contract made by the State of Louisiana with the Crescent City Gas Light Company, by virtue of acts of the Legislature of Louisiana, No. 97 of 1870, and No. 106 of 1873, referred to in the petition filed in the said suit, said privilege having become vested in your petitioner by virtue of an agreement of consolidation made by the New Orleans Gas Light Co., as it existed anterior to the year 1875, and the said Crescent City Gas Light Co., which agreement for consolidation is referred to in the petition filed in said suit, and your petitioner shows that an application was made

62 by this petitioner to this honorable court in said suit for a preliminary writ of injunction based on said contract for said exclusive privilege of making and vending gas lights, to enjoin and prohibit the defendants from making the gas lights in the city of New Orleans, for sale of the same to said city and its inhabitants; and this honorable court, on the hearing of said preliminary application, on 17th June, 1881, before said suit was at issue or could be tried, refused to grant said injunction, on the sole ground that said exclusive privilege had been repealed or annulled by the provisions of Art. No. 258 of the constitution of Louisiana, adopted in the year 1879.

Now your petitioner shows that your petitioner's contention on said preliminary application for injunction, based on the petition filed in said suit, was that said Art. 258 of said constitution impaired the obligation of a contract for said exclusive privilege created by

63 acts No. 97 of 1870, and 106 of 1873, and was, therefore, null and void, inasmuch as it violated that part of Art. 1, Sect. 10, of the Constitution of the United States, which declares that no State shall pass a law impairing the obligation of contracts.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering into said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if the said court shall hold that this suit was wrongfully or improperly removed thereto. And he prays this honorable court to proceed no further herein, except to make the order required by law, and to accept the surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the eastern district of Louisiana.

And your petitioner will ever pray, &c.

(Signed) T. J. SEMMES & PAYNE.

64 JOHN A. CAMPBELL,

For Petitioner.

James Jackson, being duly sworn, says: That he is president of the New Orleans Gas Light Company, the foregoing petitioner, and the facts stated in the foregoing petition are true.

(Signed) JAMES JACKSON.

Subscribed by James Jackson, in my presence, and by him sworn to before me, 20th June, 1881.

(Signed) CHAS. T. SONIAT, *Not. Pub.*

Order of Removal.

Let this cause be removed to the circuit court of the United States for the fifth circuit and eastern district of Louisiana, as within prayed for and according to law, upon plaintiff's giving bond, with good and solvent security, in the sum of one thousand dollars, conditioned as the law directs.

New Orleans, June 20th, 1881.

(Signed) N. H. RIGHTOR, *Judge.*

65 *Bond for Removal. Filed June 20th*, 1881.

Know all men by these presents that the New Orleans Gas Light Company, as principal, and James Jackson, as surety, are held and firmly bound unto the Louisiana Light and Heat Producing and Manufacturing Company, Watson Van Benthuysen, Ulysses Marinoni, B. Laplace, A. Marquez, James J. Reiss, John J. Gidiere, Frederick N. Thayer, Henry Gardes, and Samuel L. Todd in the penal sum of one thousand dollars, the payment whereof, well and truly to be paid unto the said Louisiana Light and Heat Producing and Manufacturing Company and Watson Van Benthuysen, Ulysses Marinoni, B. Laplace, A. Marquez, James J. Reiss, John J. Gidiere, Frederick N. Thayer, Henry Gardes, and Samuel M. Todd, their heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

66 Yet upon these conditions: The said New Orleans Gas Light Company having petitioned the civil district court for the parish of Orleans, State of Louisiana, for the removal of a certain cause therein pending, wherein the said New Orleans Gas Light Company is plaintiff and the said Louisiana Light and Heat Producing and Manufacturing Company, Watson Van Benthuysen, Ulysses Marinoni, B. Laplace, A. Marquez, James J. Reiss, John J. Gidiere, Frederick N. Thayer, Henry Gardes, and Samuel Todd, defendants, being suit No. 3316 on the docket of said civil district court, to the circuit court of the United States; in and for the eastern district of Louisiana:

Now, if the said New Orleans Gas Light Company, the petitioner aforesaid, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs they may be awarded

67 by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed

thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 20th day of June, A. D. 1881.

(Signed) NEW ORLEANS GAS LIGHT COMPANY. [SEAL.]
JAMES JACKSON, *President.*

(Signed) JAMES JACKSON. [SEAL.]

I, James Jackson, of the city of New Orleans, surety named in the foregoing bond, being duly sworn, do say: That I am a resident of the State of Louisiana, and of the city of New Orleans, and a property holder therein, and that I am worth the sum of one thousand dollars over and above all my debts and liabilities, and exclusive of property exempt by law from execution; that I have property in said State and city liable to execution of the value of more than one thousand dollars.

68 (Signed) JAMES JACKSON.

Subscribed in my presence by James Jackson, and sworn to before me, this 20th day of June, A. D. 1881.

(Signed) CHAS. T. SONIAT, *Not. Pub.*

69 *Certificate.*

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify the foregoing seventy-two pages do contain a true and complete transcript of all the proceedings had, documents filed, testimony and evidence adduced, in the cause entitled New Orleans Gas Light Co. *vs.* Louisiana Light and Heat Producing and Manufacturing Co., instituted and prosecuted in this court under the No. 3316 of the docket of this court.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of this court on this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and eighty-one, and the 105th year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

70 *Bill. Filed September 15th*, 1881.

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

To the honorable the judges of the circuit court for the circuit and district aforesaid in chancery:

The New Orleans Gas Light Company, a corporation existing under the laws of Louisiana, & having its domicil in the city of New Orleans, bring this bill against the Louisiana Light and Heat Producing and Manufacturing Company, a company organized under the Revised Statutes of the State of Louisiana, having a domicil in New Orleans, Watson Van Benthuysen, Ulysses Marinoni, B. Laplace, A. Marquez, James J. Reiss, Henry Gardes, John J. Gidiere,

Frederick N. Thayer, Samuel M. Todd, citizens of the State of Louisiana, aforesaid. Thereupon your orator complains, and says:

On the first day of April, 1835, the Legislature of Louisiana incorporated a company of persons who were authorized and
71 who came under an obligation to secure and provide the city of New Orleans, its faubourgs, and the city of La Fayette with gas lights. This act of incorporation represents that since 1829 there had been efforts to accomplish this desired object under legislative sanction and encouragement without success, and that this charter was adopted to attain it. The powers usual for corporations under the civil code were delegated to this company. The faculty of banking, with the power to circulate bank notes and to lend money, was granted. The sole and exclusive privilege to make and vend gas within the limits of New Orleans and its vicinity was conferred. The use of the streets for mains, pipes, conduits, was conceded, and protection to their property, by penal enactments, was provided. The city council was to be supplied with gas on favorable terms, and the company were required to carry their supplies throughout the whole of the city wherever the expense could be supported. This company was the New Orleans Gas Light and Banking Company.

72 Your orator further complains and says that the banking faculties of this corporation were surrendered to, and were accepted by the State in an amendatory act approved 10th March, 1845. The franchises, rights, and privileges having any relation to gas lighting, and the manufacture and sale of gas, were maintained and confirmed to the corporation, and it then acquired the name of the New Orleans Gas Light Company, to continue till the first of April, 1875, and then to terminate. In these acts provisions were made for the supply of the Charity Hospital with gas, and in subsequent acts this was to be gratuitous and the release of that institution from charges and debt enforced. The charter was amended by an act approved the 15th March, 1854, and again on the 1st March, 1860, an act was passed entitled "An act to extend the area of gas lighting in the city of New Orleans, and to reduce the price now paid by consumers." This last act required the company to lay pipes through the four districts of the city, at the require-
73 ment of the city council, at least for fifteen miles; to lay pipes so as to light the river front upon the same requirement; and to reduce the price so as never to exceed four dollars a thousand of cubic feet of gas. The gas light company were to have a prolongation of their charter for twenty years without any exclusive privilege. These amendments were all accepted by the company. The city councils claimed to have the gas lighting extended, and the price was reduced conformably to the requirements of the act, and of the city council of New Orleans. The charter aforesaid and the amendatory acts are published among the acts of the respective Legislatures, and will be referred to as part of this bill and filed as exhibits.

The General Assembly of the State aforesaid, by two enactments, one approved the 20th April, 1870, and an amendatory and re-enacting act

approved 10th July, 1873, incorporated and endowed "The Crescent City Gas Light Company of New Orleans." Corporate powers, rights, and franchises were granted to this company, and specially
74 to the said corporation was granted the sole and exclusive right of making and vending gas within New Orleans, and all the additions to the city, for the term of fifty years from the date of the expiration of the privilege of the New Orleans Gas Light Co. This date is fixed in those acts to be April first, 1875. This company was organized and established and assumed to have the sole right to manufacture and sell gas lights after the first day of April, 1875. Thus a controversy arose between these two gas light companies aforesaid as to the operation and effect of the act passed in 1860 by the Legislature of Louisiana, prolonging the charter of the older company till 1895. A suit was commenced by the Crescent City Gas Light Company in the year 1874, in the superior district court of New Orleans, against the New Orleans Gas Light Co., which was finally, on appeal, decided in the supreme court of Louisiana in February, 1875. The New Orleans Gas Light Company claimed that the act of March, 1860, was valid, and was a commuta-
75 tive contract between the State and city and that company. The State had ordered in the act for the company to accept and file its assent to it. The city had ordered compliance with its onerous conditions, and these had each and all been fulfilled by the company between 1860 and 1875, and that the only indemnity was in the prolonged charter under the act. That the act passed by the authorities of the State as an overture which had been accepted, and became a contract entailing reciprocal obligations and duties, all of which had been performed by the company, and none of which by the State or city till now, when they were attempted to be repudiated in the measures aforesaid. The judgment of the supreme court of the State was that the Crescent City Gas Light Company "have the sole and exclusive privilege to make and sell illuminating gas in the city of New Orleans for fifty years from 1st April, 1875." The court declared the act of March, 1860, "to extend the area of gas lighting, &c., &c., &c., null and void,
76 as having a title that did not declare the object of the act. The court enjoined the New Orleans Gas Light Company from conducting its business under this charter and the acts concerning it, and confirmed the other company in all of its rights, privileges, and powers, to the exclusive manufacture, and to sell gas lights in New Orleans. The New Orleans Gas Light Company obtained a writ of error, with supercedeas, upon this judgment in February, 1875, and the suit was removed to the Supreme Court of the United States by the process aforesaid until adjusted in the manner hereafter stated. There was no execution taken upon this judgment of the supreme court of Louisiana aforesaid.

The acts of the General Assembly relative to the Crescent City Gas Light Company, and the proceedings in the superior district court of New Orleans in 1874, and in the supreme court in 1875, between the corporation, are prayed to be considered as a part of this bill, and to be produced and proved on the hearing of this cause.

77 Your orator further complains and says: That during the months of February and March, 1875, overtures were made for an adjustment of the controversies between the two companies or corporations aforesaid, and the boards of directors of the said corporations, by means of consultations and conferences with one another, and with the owners of the stock in the companies aforesaid, concluded to consolidate the two corporations under the terms of an act (No. 157), approved and promulgated in 1874, entitled, "An act to authorize the consolidation of business or manufacturing corporations or companies." They selected the name of the one consolidated company to hold and enjoy the rights, privileges, powers, franchises, and property of each to be "The New Orleans Gas Light Company," and determined the amount of its capital, and the number of the directors, and the persons to compose a board for the first season and before an election. These boards made an agreement, in writing, to which the owners of all the stock of
78 either company have assented. There has been no contestation by any stockholder, or owner of shares of either of the two corporations of the consolidation or consolidated agreement.

There was a formal vote, comprising more than three-fifths of all owners of stock, ratifying and confirming the articles; and the agreement and certificate of consolidation have been filed and recorded in the office of the secretary of State. The corporation, thus organized and conducting business from the 29th March, 1875, has manufactured and sold gas throughout New Orleans without question or opposition. The supplies of gas reach to every part of the city. The bills for gas are collected every month. The shares of stock of the company have been, and now are, sold day by day in the market. The city of New Orleans and its officers, and officers of the State, are supplied by this company. There has not been any suit by State or city questioning their capacity or character as a corporation, or their title to all the franchises, privileges, rights, or property in their
79 possession. Nor has this company been questioned by any dissentient corporator or owner of stock in the companies before mentioned. Your orator avers that their enjoyment, possession, and right remained undisturbed until the proceedings hereafter mentioned and which form the ground of the complaints in this bill. The agreement in writing for a consolidation, the assents of the owners of stock, the certificate of consolidation, and the regist-ing in the office of the secretary of State, your orator will produce as an exhibit at the hearing of the cause.

5. Your orator further complains and says that the constitution of the State of Louisiana, adopted in 1879, and which was operative in 1880, by its terms contains a schedule in which article 258 forms one section. This article provides "all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, shall continue as if
80 this constitution had not been adopted; but the monopoly features in the charter of any corporation now existing in

the State, save such as may be contained in the charter of railroad companies, are hereby abolished."

Your orator avers that the acts of incorporation of the two gas companies existing prior to the consolidation were commutative contracts between the State of Louisiana and those corporations, and were reciprocally binding contracts, which did not require any confirmation or ratification by the convention assembled in 1879, or by the popular vote. They had been made by competent authority on the part of the State, and upon their completion were under the protection of the provisions of the constitution of the State, which protect vested rights from violation by legislative enactments, and from the provisions that prohibit the enactment of laws that abrogate or impair the obligation of contracts. The corresponding provisions
81 in the Constitution of the United States, which inhibit all laws of any State from impairing the obligation of contracts or the deprivations of property, except in the due course of legal process, protect the rights of your orator to the privileges and franchises belonging to said corporations, and which were conveyed to your orator by the consolidation of those companies.

Your orator charges that the constitution of the State aforesaid, has no valid operation to impair, abridge, or abolish the exclusive right, privilege, and franchise of your orator to manufacture and sell gas lights in the city of New Orleans for the terms specified in the charters granted to the Crescent City Gas Light Company in the year 1870 and in 1873, before referred to, and which make a part of this bill.

Your orator charges that the possession of your orator of the sole and exclusive right, aforesaid, has existed from the agreement of the 29th March, 1875; that the property, labor, and skill requisite for the fulfillment of the duties and obligations imposed in
82 the statutes, which affect the consolidated company, have been regularly, day by day and night by night, furnished by your orator, and are now being furnished in the conduct and management of the lighting the city of New Orleans with gas.

Your orator charges that the State of Louisiana has regularly assessed the property of the corporation and its franchise for taxation, and this company was compelled by the judicial tribunals at the suit of the State to pay such taxes on property amounting to three millions seven hundred and fifty thousand dollars, of which sum the franchise is charged to be worth twelve hundred and fifty thousand dollars, all of which appears in the 31st volume of the Louisiana Annual Reports, p. 475, to which reference is made.

6. Your orator further complains and says: That the city of New Orleans has in like manner assessed your orator, and has required from your orator the performance of the obligations of their charter in supplying gas through the city and on the public streets
83 and in public buildings since the consolidation of the corporations aforesaid up to the present time.

But so it is that on the 25th January, 1881, the council of New Orleans, under the instigation and management of H. S. Jackson, Watson Benthuysen, and their confederates, passed an ordinance to

authorize the said Jackson, Van Benthuysen, and their confederates for the period of fifty years to lay at their own expense any and all necessary mains, pipes, conduits, in and along said streets, alleyways, sidewalks, bridges, avenues, parks, and other places in New Orleans, for the purpose of supplying all buildings, erections, works, when needed, with gas. These parties were empowered to enter upon all these places and to break the surface thereof, and to make excavations at their discretion to accomplish their aims. One of the conditions was that the said Jackson and Benthuysen should speedily supply the city of New Orleans and its inhabitants with illuminating gas of not less than twenty candle power at a
84 price of two dollars and fifty cents per one thousand feet of cubic gas consumed with a deduction of ten per cent. for prompt payment.

The ordinance authorized the transfer and assignment of this privilege. The ordinance provided that the said Benthuysen and associates might make connections between their mains and the meters in the houses. These parties were required to give bond in the sum of $20,000 for the fulfillment of the duties and conditions imposed. Your orator charges that the said ordinance is a plain and palpable attempt upon the part of the city and of Jackson and Benthuysen to invade the rights, privilege, franchise, right, and property conveyed to your orator in the act of consolidation with the sanction of the acts of the Legislature and the judgment of the supreme court of the State.

7. Your orator further complains and says: That the said Jackson and Benthuysen and their confederates accepted the ordinance adopted in January, 1881, by the city council. They bound
85 themselves to construct works and to supply gas for use in houses in the city of New Orleans, and to do and perform all the ordinance requires. With a view to prosecute their undertaking in April, 1881, they and their confederates were organized into a corporation by a notarial act, and Watson Benthuysen was chosen as president, and the defendants to the bill are resident directors, and the corporation has the name and style of The Louisiana Light and Heat Producing and Manufacturing Company, a defendant before mentioned. Your orator charges that the said several parties have combined to invade and injure the franchise, privilege, power and property secured to it by the consolidation, and embodied in the Legislative acts of 1870 and 1873 before described, and which they were in the quiet occupation and use before those unlawful acts. These defendants insist that the article 258 of the constitution of 1879 is a valid and operative abolition of the privilege granted in those acts and declared as
86 effective in the judgment rendered by the supreme court of the State of Louisiana, in February, 1875. They maintain that the acts of the Legislature were police regulations, revocable at the pleasure of the Legislature, and that there is no vested or permanent right or interest to be acquired by such a grant. The effect of these acts have been to depreciate and impair the vendible value of the capital stock of the company, occasioning loss to the amount of

two hundred thousand dollars and upwards. The pretences of the said parties have tended to impair the value of their fixed property by their proclamations of a purpose to occupy the same streets, and to furnish gas to the same consumers. There is a sentiment of insecurity and distrust excited by the repudiation of contracts by a State and city, and the selection of new parties to contest the rights that rest upon statute law and judicial decisions.

87 The said parties have attempted, and have partially succeeded, in disturbing the right of your orators by casting doubts upon their title, through the agency of public officers and agents, and by threats that their mains and meters would be placed in close proximity to those of your orator, and supplant your orator in business. The combination of the city council of New Orleans with the individuals mentioned and the association, without any consultation with the Legislature or authority from the Legislature to assail rights resting upon the sanctions of those held by your orator and the exorbitant grant to those persons without authority of law show the mischievous and malign purpose in view of these parties in respect to your orator. Their purpose is to impair the value of their rights of property, and to embarrass their business and inflict irreparable injury. For this end the supreme authority of the State to recall or revoke contracts of this description is insisted on. The want of power of the State to bind itself by a contract containing a monopoly feature is assumed as irrefragable law, notwithstanding the plain and obvious fact

88 is that from an early period in the legislation of this State charters have been granted to railroad companies, levee companies, drainage companies, water-works companies, gas companies, slaughter-house companies, wharf and ferry rights, which have been uniformly maintained as binding upon the parties and the State. Some of these were granted within two years before the adoption of this constitution of 1879. Besides the disorganizing acts of the city council in the matter aforesaid, there have been instances in the local tribunals when the confiscating process implied in the abolition of grants founded on valid considerations by a legislative body without inquiry or counsel, but by a blind and unreasoning declaration of arbitrary will, has received sympathy and support. In one case your orator applied for protection by appeal to the constitution and the laws, and was denied on the ground that all such

89 contracts as your orator exhibits has no durable existence, and may be destroyed by convention or by legislative assembly. The enormity of the mischief and of the wrong impels your orator to appeal for protection to the Constitution of the United States.

The acts of the General Assembly, which embody the grant aforesaid, are, in spirit, effect, and purpose, contracts. The contracts impose onerous duties and obligations upon the grantees. Those duties are public in their nature, affording a steady supply of an important article of common use to a community upon prices regulated by contract.

The corporation have capital, skill, enterprise, and labor invested

on a permanent and durable basis, upon faith in the fidelity of the parties to it. The State cannot change or obliterate a condition in the contract. The clause cited to justify this change is a violation of the supreme law of the land when applied to a contract such as your orator holds.

Your orator claims the protection of the Constitution of
90 the United States from any act of the convention of 1879, or of the people adopting it, and from any clause in the constitution which was adopted which may impugn the obligation of the contract we claim, or which abolishes or seeks to abolish any term of the charter which secures a privilege or franchise to manufacture and vend gas in the city of New Orleans as a sole and exclusive right.

To the end, therefore, that the said defendants may become parties to this bill, and may show, if they can, why the relief prayed for shall not [have] been granted, your orator prays that writs of subpœna may issue to them according to the practice of the court, and that they may answer the interrogatories underwritten and numbered 1, 2, 3.

And your orator prays that your honors would declare and decree that your orator be confirmed in the enjoyment and use of the sole and exclusive privilege to manufacture and vend gas within the city of New Orleans for the term of fifty years, commencing the first of April, 1875, and to continue till the term of the grant is ended.

91 2. That this privilege and right was not abolished by the article 258 of the existing constitution of the State of Louisiana, but is a binding contract wherein your orator has a durable and vested right.

3. That the acts of the city council of New Orleans in granting the privileges to the defendants to vend gas in New Orleans, and for that end to lay mains, pipes, mains and conduits, and to disturb the surface of streets, was not warranted by law, and was an invasion of the privilege and rights of your orator, and the ordinance is inoperative and void.

4. That the defendants be pepetually injoined from asserting any right to execute the ordinance within any portion of the city of New Orleans, or in disturbing your orator in the use and enjoyment of their sole and exclusive privilege.

5. That an injunction be granted until the final hearing requiring the defendants to desist from all attempts to make or to vend gas in the city of New Orleans, or to prepare therefor.

92 6. Your orator prays for such other and further relief as may be consistent with equity and good conscience.

(Signed) THOS. J. SEMMES & PAYNE,
Sol's for Compl't.

(Signed) J. A. CAMPBELL, *Sol'r.*

James Jackson, being sworn, says he has read the foregoing bill, and the facts therein stated are true, and that he is the president of

the New Orleans Gas Light Company, the complainant in said bill of complaint.

(Signed) JAMES JACKSON.

Sworn to and subscribed before me, notary, this 27th June, A. D. 1881.

[SEAL.] (Signed) CHAS. T. SONIAT, *Not. Pub.*

1 interrogatory. Attach a copy of the ordinance of the city council of the city of New Orleans, empowering Jackson and Benthuysen to lay down pipes, mains, and conduits in the streets of the city of New Orleans; where did the persons named in that ordinance
93 reside when it was adopted?

2. What acts have been done by the parties to the ordinance, or by the Louisiana Light and Heat Producing and Manufacturing Company, towards carrying into effect the ordinance aforesaid?

3. Within what time do you expect to have your works completed? What progress has been made towards that end?

Exhibits referred to and made part of the foregoing Bill.

Extracts from "An act to incorporate the New Orleans Gas Light and Banking Company," approved April 1, 1835.

SECTION 36. Be it further enacted, etc., That the New Orleans Gas Light and Banking Company, their successors and assigns, shall have and be entitled to the sole and exclusive privilege of vending gas lights in the city of New Orleans and its faubourgs, and the city of Lafayette, to such persons or bodies corporate who may voluntarily choose to contract for the same.

94 SECTION 37. Be it further enacted, etc., That in order to enable the said company to carry the foregoing section into effect, they shall be authorized to lay pipes or conduits at the expense of the company in any of the streets of the said city and its faubourgs, and the streets of the city of Lafayette, where the same may be required, in such manner as may produce the least possible inconvenience to the city or its inhabitants, and provided, also, that the company shall afterwards repair the streets they have broken with the least possible delay; and in case said company should fail reinstating the paved streets so broken to the satisfaction of the surveyor of the city of New Orleans, or of the mayor, said company shall be liable to pay a fine not exceeding one hundred dollars, at the descretion of the court, for each day of such neglect or refusal, which fine shall be recovered to the profit of the city, before any competent tribunal; and further, the mayor or the surveyor can order the said paving to be reinstated in a proper manner,
95 at the expense of said company, provided said company can always establish, by the report of two experts to be appointed by the parties, and of one expert to be appointed by the court, that the paving has been properly reinstated; and provided further, that the above provision shall apply also to the city of Lafayette.

SECTION 42. Be it further enacted, etc., that when, after the expira-

tion of forty years, the corporation of New Orleans should resolve to buy the said gas works from the New Orleans Gas Light and Banking Company, which they hereby shall have the right to do, the price shall be fixed by arbitrators, five of whom shall be chosen by the president and directors of the company and five by the city council of New Orleans, said arbitrators not to be stockholders in said company, nor members of the city council of New Orleans; said arbitrators shall take into consideration the value of the gas works, grounds, buildings, and everything thereunto appertaining, and if they agree and so report in wrsting, their award
96 shall be binding on the parties; but if they should not agree, the judge of the district court of the first judicial district, or judge of any other court of competent jurisdiction, shall appoint as umpires five disinterested individuals as above, whose decision and award in writing, reported to the court above, shall be binding and conclusive, any law to the contrary notwithstanding; the amount so agreed upon shall be payable in the bonds of the mayor, aldermen and inhabitants of New Orleans, bearing interest at five per cent. pet annum, payable semi-annually, and redeemable in not less than ten, nor more than thirty, years, from the day on which said award shall be signed, and the said gas works delivered over to the said corporation of New Orleans; provided, all the works and placing of main pipes and lamp posts shall have been made at the expense of the company.

SECTION 43. Be it further enacted, etc., That in case the mayor, alderman and inhabitants shall decline purchasing the said
97 gas works, as provided for in section forty-second, and so notify the New Orleans Gas Light and Banking Company, at any time within one year after the time specified in said section forty-second, the bonds given by the corporation of New Orleans for the amount of stock owned by the said corporation shall be renewed by the New Orleans Gas Light and Banking Company for twenty years, on the same terms and conditions as those upon which they were originally given; provided, however, the amount formed by the sinking fund hereinbefore provided shall be applied to the payment of said bonds as far as it will go, and the bonds only renewed for such balance as may not be made up by the aforesaid sinking fund.

An act to amend the charter of the New Orleand Gas Light and Banking Company.

Whereas the stockholders of the New Orleans Gas Light and Banking Company have, by their memorial, petitioned to
98 be permitted to surrender so much of their charter as grants to them the privilege of banking.

SECTION 1. Be it therefore enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That said surrender is accepted, and that so much of the act approved the first day of April, one thousand eight hundred and thirty-five, incorporating said New Orleans Gas Light and Banking Company, and all supplementary acts as authorizes said company to carry on the business of banking, is repealed: provided, that all

the debtors of the branches of the said bank, furnishing good and sufficient security, shall have for the first two years the privilege of renewing their notes or other obligations, or delaying the payment thereof by the payment each year of ten per centum upon the whole amount due by them, exclusive of interest, and after that period, on the payment of fifteen per centum annually, exclusive of interest upon the whole amount, until the entire debts are paid and
99 extinguished; provided, the place of payment shall not be changed without the consent of the debtor, and that the debtor shall not be required to give security out of the parish from which any branch may be withdrawn.

SECTION 2. Be it further enacted, etc., That so much of said act, and of all others in relation thereto, as authorizes said company to make and vend gas within the city of New Orleans and its faubourgs, with all the rights and privileges thereby granted, subject to all the clauses and conditions thereto annexed, be continued in force under the name and title of the "New Orleans Gas Light Company" until the first day of April, one thousand eight hundred and seventy-five, at which period all the corporate privileges of said company shall expire; and, provided, the said gas light company shall never raise the price of gas above six dollars per one thousand cubic feet, and shall give up the right of extending its operations beyond the corporate limits of the three municipalities of the city of New Orleans; and, provided further, that all the privileges conferred in the thirty-fifth section of the original act
100 dated the first day of April, eighteen hundred and thirty-five, be repealed.

SECTION 3. Be it further enacted, etc., That all the rights of property, whether movable or immovable, corporeal or incorporeal, with their mortgages, privileges, and rights of action shall, be transferred to and invested in said New Orleans Gas Light Company, who shall, by the mere acceptance of this act, assume all the debts, dues, and responsibilities of the said New Orleans Gas Light and Banking Company, and that all the holders of notes, depositors, and other creditors of said bank shall be paid out of the assets and property so transferred by preference and privilege over all other debts to be hereafter contracted by said gas light company.

SECTION 4. Be it further enacted, etc., That the capital of said company be reduced to one million two hundred thousand dollars, divided into twelve thousand shares of one hundred dollars each, to be apportioned among the stockholders of said New Orleans Gas Light and Banking Company, and that the number of di-
101 rectors be reduced to six, three of whom shall form a quorum for the transaction of ordinary business, and a majority of whom have authority to make all by-laws, rules, and regulations necessary and useful and not inconsistent with the constitution of this State or of the United States, or of this charter.

SECTION 5. Be it further enacted, etc., That the said New Orleans Gas Light and Banking Company shall execute a full release and discharge of all claims they may have against the Charity Hospital, and that during the continuance of the charter of the said New Or-

leans Gas Light Company, they shall furnish the said Charity Hospital all the gas and fixtures necessary for lighting the same free of charge.

SECTION 6. Be it further enacted, etc., That this act shall not be in force until at a meeting of the stockholders, to be convened at their banking-house in this city, by publications, inserted during thirty days, in one or more public gazettes of the cities of Philadelphia, New York, and New Orleans, the same shall have
102 been accepted by not less than two-thirds of the stockholders so convened, a copy of whose proceedings shall be lodged in the office of the secretary of State.

(Signed) A. BOUDOUSQUIE,
Speaker of the House of Representatives.

(Signed) F. GARCIA,
President of the Senate.

Approved March 10th, 1845.

(Signed) A. MOUTON,
Governor of the State of Louisiana.

An act to amend the charter of the New Orleans Gas Light Company.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly, That the second section of an act entitled "An act to amend the charter of the New Orleans Gas Light and Banking Company," approved March 10th, eighteen hundred and thirty-five, be repealed; and that the said section be, and is hereby, re-enacted in the following words, to wit:

That so much of said act, and of all acts in relation thereto,
103 as authorizes said company to make and vend gas within the city of New Orleans and its faubourgs, with all the rights and privileges thereby granted, subjected to all the clauses and conditions thereto annexed, be continued in force under the name and title of the "New Orleans Gas Light Company," until the first day of April, one thousand eight hundred and seventy-five, at which period all the corporate privileges of the said company shall expire; provided, the said Gas Light Company shall never raise the price of gas above four dollars and fifty cents per one thousand cubic feet; and, provided further, that all the privileges conferred in thirty-fifth section of the original act, dated the first day of April, eighteen hundred and thirty-five, be repealed.

SECTION 2. Be it further enacted, etc., That, in order to enable the New Orleans Gas Light Company to supply the fourth district of the city of New Orleans with gas, agreeably with the original act, approved April first, eighteen hundred and thirty-five,
104 the said company may, from time to time, increase the amount of their capital stock until it shall reach one million five hundred thousand dollars.

SECTION 3. Be it further enacted, etc., That this act shall not be in force until, at a meeting of the stockholders, to be convened at

their office, in the city of New Orleans, by publications inserted during thirty days in one or more public gazettes of the cities of Philadelphia, New York, and New Orleans, the same shall have been accepted by not less than two-thirds of the stockholders in value so convened, a copy of whose proceedings shall be lodged in the office of the secretary of State.

(Signed) JOHN M. SANDIGE,
Speaker of the House of Representatives.

(Signed) ROBERT C. WICKLIFFE,
President pro tem. of the Senate.

Approved March 15th, 1854.

(Signed) P. O. HEBERT,
Governor of the State of Louisiana.

A true copy.

ANDREW S. HERRON,
Secretary of State.

105 An act to extend the area of "gas lighting" in the city of New Orleans, and to reduce the price now paid by consumers.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the charter of the "New Orleans Gas Light Company," as now established by law, shall remain in full force and effect until the first day of April, A. D. 1895: Provided, That nothing in this act shall be construed so as to continue the exclusive privilege granted to said company beyond the period fixed by its present act of incorporation; subject, however, to the following additional conditions and restrictions:

First. The "New Orleans Gas Light Company," from and after the first day of January, 1861, shall reduce the price of gas to four dollars per one thousand cubic feet to all consumers, and shall never thereafter have the right to increase the same.

Second. It shall be the duty of the said company, within
106 three years from and after the first day of July, 1860, to lay down not less than fifteen miles of main pipes through the four "districts of the city," according to their respective wants.

Third. The said "New Orleans Gas Light Company" shall, and they are hereby further required to, lay down free of charge the main pipes necessary for lighting the levee on river front of the city, whenever required so to do by the "common council."

And whereas in order to carry out and faithfully perform the preceding conditions, it may be necessary for the said company to increase their capital stock: Therefore,

SECTION 2. Be it further enacted, etc., That the "New Orleans Gas Light Company" shall have the power to increase, from time to time, the capital stock of the said company, as the board of directors may determine, to an amount which shall not exceed "one million dollars."

SECTION 3. Be it further enacted, etc., That this act shall not have

effect until at a meeting of the stockholders of said "Gas Light Company," to be convened at their office in New Orleans, by
107 publication inserted during thirty days in one or more public gazettes of said city, the same shall have been accepted by not less than two-thirds of the stockholders so convened, a copy of whose proceedings shall be lodged in the office of the secretary of State.

C. H. MORRISON,
Speaker of the House of Representatives.
HENRY M. HYAMS,
Lieut. Gov. and President of the Senate.
THOMAS O. MOORE,
Governor of the State of Louisiana.

Approved March 1st, 1860.

No. 97.

An act to incorporate the Crescent City Gas Light Company.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That Joseph H. Oglesby, William Creevy, Francis J. Herron, F. W. Perkins, S. D. McPherson, George F. Sherman, W. B. Cornell, W. Hawksworth, and their present and future associates, successors, and assigns, be, and they are hereby constituted and declared to be from and after the passage of this act, a body corporate and
108 politic, in fact and in name, by the style "The Crescent City Gas Light Company," and by that name they and their successors shall and may have continued succession, and shall be persons in law, capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places whatsoever; and that they and their successors may have a common seal, and may change and alter the same at pleasure; and also that they and their successors, by the same name and style, shall be in law capable of holding, purchasing, and conveying any estate, real or personal, for the use of said corporation: Provided, That the lands, tenements, and hereditaments which it shall be lawful for said corporation to hold shall be only such as shall be requisite for its immediate accommodation in relation to the convenient transaction of its business, and the properly carrying on and conducting of its works, or such as shall have been mortgaged to it, in satisfaction of debts
109 contracted in the course of its dealings, or purchased at sales, upon judgments which shall have been obtained for such debts.

SECTION 2. Be it further enacted, etc., That the capital stock of said corporation shall be three million dollars, to be divided into thirty thousand shares of one hundred dollars each.

SECTION 3. Be it further enacted, etc., That books for subscription to the capital stock of said company shall be opened in New Orleans, and under the management and superintendence of the incorpora-

tors, who shall fix the time and places for receiving such subscriptions, giving due notice of the same through the daily papers; and that after seven thousand five hundred shares are subscribed, the incorporators shall call a meeting of the subscribers for the purpose of electing a board of directors, whose term of office shall be until the first Tuesday of January following their election as such:

Provided, That no one shall be elected as director who is
110 not a resident of the State of Louisiana and the owner of one hundred shares of the stock: Provided, further, That the incorporators shall have the power to fix the per centum to be paid upon subscribing to the stock, and the time at which further installments shall be called in, until the election of the first board of directors, when this power shall rest with them and their successors in office.

SECTION 4. Be it further enacted, etc., That the office of said company shall be located in New Orleans; that the works and affairs of said company shall be managed and conducted by a board of six directors, who shall elect one of their own number president, and shall also elect a secretary; and that from and after the first election of directors an annual election for directors shall be held on the first Tuesday of each year, due notice of the same to be given by the secretary of the company, through the daily papers, for thirty days previous to the time fixed for said election; the election to be held at the office of the company, each share of stock to be
111 entitled to one vote, either by the owner in person or by proxy, and the person receiving the highest number of votes to be declared duly elected; the board of directors to fix the compensation of the president and other officers and employees of the company.

SECTION 5. Be it further enacted, etc., That if any director shall remove out of the State, or cease to be a stockholder, his office shall be declared vacant, and whenever any vacancy or vacancies shall happen among the directors by death, resignation, or otherwise, such vacancy or vacancies shall be filled for the remainder of the year in which they shall happen by such person or persons as the remainder of the directors for the time being, or a majority of them, shall appoint.

SECTION 6. Be it further enacted, etc., That a majority of the board of directors shall constitute a board for the transaction of business, and shall have power to make and prescribe such by-laws, rules, and regulations as shall appear needful and proper, and
112 shall have the power of appointing as many officers, clerks, and assistants as may be necessary for carrying on the business and affairs of the company, allowing them such salary as they may see proper.

SECTION 7. Be it further enacted, etc., That half yearly dividends shall be made of so much of the profits of said company as the directors may think advisable, and that at each annual meeting for the election of directors the outgoing directors shall lay before the stockholders a statement of all the affairs and concerns of the company for their information.

SECTION 8. Be it further enacted, etc., That the Crescent City Gas Light Company, their successors and assigns, shall have and be entitled to the sole and exclusive privilege of making and vending gas lights in the city of New Orleans, to such persons or bodies corporate who may voluntarily choose to contract for the same, for the term of fifty years from and after the date of the expiration of the charter of the New Orleans Gas Light Company.

113 SECTION 9. Be it further enacted, etc., That to carry the foregoing section into effect, they shall be authorized after the passage of this act to lay pipes or conduits at the expense of the company in any of the streets or alleys of said city of New Orleans, where the same may be required, in such manner as may produce the least inconvenience to the city or its inhabitants: And provided, also, That the company shall afterwards repair, with the least possible delay, the streets they have broken.

SECTION 10. Be it further enacted, etc., That if any person or persons shall, by any means whatever, destroy any part of the gas pipes constructed or owned by said company, or any of their works, buildings, fixtures, or machines, such person or persons shall, each of them, be liable for all damages occasioned thereby.

SECTION 11. Be it further enacted, etc., That the Crescent City Gas Light Company is authorized and empowered to manufacture gas from any and all materials suitable for such purpose, and shall

114 have power to purchase and use any patent or patents or the right to the same for the manufacture of such gas lights.

SECTION 12. Be it further enacted, etc., That the works of said company must be complete and in condition to supply the proper amount of gas required for the city of New Orleans within ten years from and after the date of the passage of this charter; and, in case of failure, the charter to be null and void.

SECTION 13. Be it further enacted, etc., That all acts and parts of acts heretofore passed conflicting in any manner with the provisions of this act of incorporation are hereby repealed.

MORTIMER CARR,
Speaker of the House of Representatives.
OSCAR J. DUNN,
Lieutenant Governor, and President of the Senate.

Approved April 20th, 1870.

H. C. WARMOTH,
Governor of the State of Louisiana.

No. 106.

An act to amend and re-enact an act entitled "An act to incor-

115 porate the Crescent City Gas Light Company," approved April 20th, 1870, and to fix with more precision the time when said company shall go into operation, and to authorize said company to issue mortgage bonds, to change the time for election of directors, and to limit the price to be charged for gas.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,

That an act entitled an act to incorporate the Crescent City Gas Light Company, approved April 20th, 1870, be so amended—

1. That the board of directors of said corporation are hereby authorized by by-laws to determine the number of said directors, which shall consist of not less than three nor more than nine persons; that any person who is the owner of ten shares of stock may be a director. Said board shall elect a president and vice-president from their own body, and a secretary and treasurer either members or not of their own body.

2. That the annual election for the board of directors shall
116 take place on the second Tuesday of January of each year. Ten days notice of the same shall be given through two daily papers of the city of New Orleans.

3. That said corporation shall have power to issue bonds not exceeding in amount one million dollars, to be secured by mortgage on the works and property of said corporation; that the time of maturity and rate of interest of said bonds shall be fixed by the board of directors.

4. That the said corporation shall not charge more than four dollars per thousand cubic feet for gas, except in case of war or blockade.

5. That the date of expiration of the charter of the New Orleans Gas Light Company, as mentioned in section eight of the charter hereby amended, is hereby declared to be the first day of April, A. D. 1875.

SECTION 2. Be it further enacted, etc., That all the franchises and rights granted by the act hereby amended, and by this act, be, and the same are hereby, confirmed unto the said Crescent City
117 Gas Light Company from the first day of April, A. D. 1875, for the term fixed in their charter.

That sections nine and twelve of the act hereby amended shall not be deemed at all affected by this act.

SECTION 3. Be it further enacted, etc., That the term "City of New Orleans," as used in the eighth section of the act hereby amended, shall be deemed to include all parts of the present city of New Orleans and any additions which may at any time be made thereto not conflicting in any manner with the charter of the Jefferson City Gas Light Company.

That all parts of the act hereby amended which conflict with this act, and so far as they conflict with this act, be, and the same are hereby, repealed.

That all other acts, and all parts of other acts, conflicting with this act or with the act hereby amended, be, and the same are hereby, repealed.

CHARLES W. LOWELL,
Speaker of the House of Representatives.
C. C. ANTOINE,
Lieutenant Governor, and President of the Senate.

118 Approved July 10, 1873.

WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

No. 158.

An act to authorize the consolidation of business or manufacturing corporations or companies.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That any two business and manufacturing corporations or companies now existing under general or special law, whose objects and business are in general of the same nature, may amalgamate, unite, and consolidate said corporations or companies, and form one consolidated company, holding and enjoying all the rights, privileges, powers, franchises, and property belonging to each, and under such corporate name as they may adopt or agree upon. Such consolidation shall be made by agreement in writing, by or under the authority of the board of directors, and the assent of the owners of at
119 least three-fifths of the capital stock of each of said corporations or companies; and a certificate of the fact of such consolidation, with the name of the consolidated company, shall be filed and recorded in the office of the secretary of State: Provided, No such consolidation shall, in any manner, affect or impair the right of any creditors of either of said companies. In the agreement of consolidation the number of directors of the consolidated company shall be specified, and the capital stock may be any amount agreed upon by the companies or corporations, and set forth in the articles of consolidation.

SECTION 2. Be it further enacted, etc., That all laws or parts of laws conflicting in any manner with the provisions of this act be, and the same are hereby, repealed, and that this act shall take effect from and after its passage.

CHAS. W. LOWELL,
Speaker of the House of Representatives.
C. C. ANTOINE,
Lieutenant Governor, and President of the Senate.

Approved December 12, 1874.

WM. P. KELLOGG,
Governor of the State of Louisiana.

120 *Subpœna in Chancery to Watson Van Benthuysen. Issued September 24th*, 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon Watson Van Benthuysen to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery filed against him and others, wherein the New Orleans Gas Light Company is complainant, and said Watson Van Benthuysen and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of
121 the Supreme Court of the United States of America, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *Dy Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1881; otherwise, the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *Dy Clerk.*

Marshal's Return.

Received, September 26th, 1881, by the U. S. marshal, and on Sept. 28th, 1881, I served a true copy of the within subpœna in chancery on Watson Van Benthuysen, def't, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

122 *Subpœna in Chancery to Ulysses Marinoni. Issued September 24th*, 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon Ulysses Marinoni to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery, filed against him and others, wherein the New Orleans Gas Light Company is complainant and said Ulysses Marinoni and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the
123 Supreme Court of the United States of America, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *Dy Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1881; otherwise, the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *Dy Clerk.*

Marshal's Return.

Received, September 26th, 1881, by the U. S. marshal, and on Oct. 5th, 1881, I served a true copy of the within subpœna in chancery on Ulysses Marinoni, def't, by handing the same to him in person, in the city of New Orleans.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

Subpœna in Chancery to B. Laplace. Issued September 24th, 1881.

124 UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon B. Laplace to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery filed against him and others, wherein The New Orleans Gas Light Company is complainant and said B. Laplace and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have execu'ed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

125 [SEAL.] (Signed) T. V. COUPLAND, *Dy Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1881; otherwise, the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *Dy Clerk.*

Marshal's Return.

Received, September 26th, 1881, by the U. S. marshal, and on Sept. 28th, 1881, I served a true copy of the within subpœna in chancery on B. Laplace, def't, by leaving the same at his domicile, at corner of Elysian Fields and Decatur streets, city of New Orleans, in the hands of his son, Albert Laplace, a person apparently above the age of 14 years, I found living and residing at said domicile, the said B. Laplace being absent at the time of said service, all of which I learned by interrogating said Albert Laplace.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

126 *Subpœna in Chancery to A. Marquez. Issued September 24th, 1881.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon A. Marquez to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery filed against him and others, wherein the New Orleans Gas Light Company is complainant and said A. Marquez and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th
127 day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1881; otherwise, the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received, September 26th, 1881, by the U. S. marshal, and on Sept. 28th, 1881, I served a true copy of the within subpœna in chancery on A. Marquez, def't, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

128 *Subpœna in Chancery to James J. Reiss Issued September 24, 1881.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon James J. Reiss to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery, filed against him and others, wherein the New Orleans Gas Light Company is complainant and said James J. Reiss and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th
129 day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1881; otherwise, the bill many be taken *pro confesso.*

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received, September 26th, 1882, by the U. S. marshal, and on September 29th, 1881, I served a copy of the within subpœna in chancery on James J. Reiss, def't, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Subpœna in Chancery to Henry Gardes. Issued September 24, 1881.

130 UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon Henry Gardes to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery filed against him and others, wherein the New Orleans Gas Light Company is complainant and said Henry Gardes and others are defendents.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of September, in the year of our Lord one thousand eight hun-
131 dred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of November, 1881; otherwise, the bill may be taken as *pro confesso.*

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received, September 26th, 1881, by the U. S. marshal, and on October 20th, 1881, I served a true copy of the within subpœna in chancery on Henry Gardes, def't, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

Subpœna in Chancery to John J. Gidiere. Issued September 24th, 1881.

UNITED STATES OF AMERICA:

132 The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon John J. Gidiere to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery filed against him and others, wherein the New Orleans Gas Light Company is complainant and said John J. Gidiere and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *Dy Clerk.*

133 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1881; otherwise, the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND, *Dy Clerk.*

Marshal's Return.

Received, September 26th, 1881, by the U. S. marshal, and on September 28th, 1881, I served a true copy of the within subpœna in chancery on John J. Gidiere, def't, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

Subpœna in Chancery to Frederick N. Thayer. Issued September 24th, 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

134 You are hereby commanded to summon Frederick N.

Thayer to appear before the honorable, the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery filed against him and others, wherein the New Orleans Gas Light Company is complainant and said Frederick Thayer and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

The defendant is hereby notified that he is required to
135 enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1881; otherwise, the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received, September 26th, 1881, by the U. S. marshal, and on September 29th, 1881, I served a true copy of the within subpœna in chancery on Frederick N. Thayer, def't, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Subpœna in Chancery to Samuel M. Todd. Issued September 24th, 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon Samuel M. Todd to appear before the honorable the judges of the fifth judicial
136 circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1881, then and there to answer a bill in chancery filed against him and others, wherein the New Orleans Gas Light Company is complainant, and said Samuel M. Todd and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his

appearance in the clerk's office of the United States circuit
137 court on or before the first Monday of November, 1881, otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received September 26th, 1881, by the U. S. marshal, and on Oct. 21st, 1881, I served a true copy of the within subpœna in chancery on Samuel M. Todd, def't, by handing the same to him in person, in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Entry at Rules. Extract from Chancery Order Book.

November Rules, 1881, Monday, 7th.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY, } 9581.

The defendants herein, by Miller, Finny & Miller, J. M. Bonner, and E. Howard McCaleb, its solicitors, claim they have already pleaded in this case, and, with this reservation, enter appearance as required by subpœna.

138 *Motion to Dismiss Bill. Entered & Filed November 7th*, 1881.

U. S. Circuit Court.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING COMPANY. } No. 9581.

On motion of John M. Bonner, E. H. McCaleb, and Miller, Finney & Miller, solicitors for defendants, and on suggesting to the court that when this cause was removed to this court, the defendants had already in the State court pleaded exceptions to the suit, which exceptions were pending and fixed for trial at and before the time of said removal, and on further suggesting that the complainant has neither replied to said exceptions, which stand in this court as pleas to the bill, or set said exceptions down for argument as required by equity rules Nos. 32 and 38—

It is now ordered that the complainant show cause on Saturday morning, this 12th November, 1881, at 11 o'clock, why its bill
139 should not be dismissed, or why such order should not be made as the case requires.

Marshal's Return.

Received November 8th, 1881, by the U. S. marshal, and on the 9th day of Nov., 1881, I served true copies of the within rule on

Judge Jno. A. Campbell, by leaving the same at his office, No. 3 Carondelet St., in the hands of A. Goldthwaite, Esq., occupying a portion of said office, Judge Jno. A. Cambell being absent at the time of service; and on the 9th day of Nov., 1881, I served a true copy of the within rule on Thomas J. Semmes & Payne, Esq'r's, by handing the same to Thos. J. Semmes, Esq., in person in this city.

(Signed) JESSE WHARTON, *D'y Marshal.*

Order.

Motion to dismiss bill discharged and time allowed, &c.

Extract from the Minutes.

November Term, 1881.

NEW ORLEANS, SATURDAY, *Nov'r* 12, 1881.

Court met pursuant to adjournment.

140 Present: Hon. Don A. Pardee, circuit judge.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 9581.

This cause came on to be heard on the rule to dismiss the bill, &c., herein taken by the defendant on 7th November, 1881.

T. J. Semmes and John A. Campbell, for complainant.

Miller, Finney & Miller, E. H. McCaleb, and J. M. Bonner, for defendant.

And the same was argued by counsel for the parties respectively, whereupon, upon consideration whereof, it is ordered that said rule be discharged in so far as it seeks to dismiss the bill herein, and the complainant has until the next rule day to reply to the defendants' plea, or to set the same down for argument, or to recast its pleadings, or to amend its bill.

141 *Petition Praying for the Filing of Amended Bill and Order Allowing same Filed December 2d*, 1881.

U. S. Circuit Court, East. District of Louisiana.

Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING CO. } No. 9581.

The plaintiffs, by their solicitors, inform the court that pursuant to the order in this cause they have prepared an amended bill in chancery representing their claim upon the equitable jurisdiction of the court, and are ready to file the same, to be placed on the chancery docket. This bill is the bill heretofore filed on 15th Sep-

tember, 1881, and is again submitted and filed as an ameded bill.

They inform the court that their petition, as filed, is sufficient to support their claims at law, and they ask that it be placed on the common law docket.

142 They pray that the court may allow these things to be done, and said bill filed on Sept. 15th, 1881, to stand as an amended bill.

(Signed) T. J. SEMMES & PAYNE,
J. A. CAMPBELL,
Sol's for Compl'ts.

Order.

It is ordered that the things above prayed for be allowed and done, and that the defendants be allowed to demur, plead, or answer as they may be advised.

(Signed) EDWARD C. BILLINGS, *Judge.*
Dec. 2, 1881.

Entry in Chancery Order-Book.

THE NEW ORLEANS GAS-LIGHT COMPANY
vs.
THE LOUISIANA LIGHT AND HEAT PRODUCING CO. } 9581.

DEC. 2, 1881.

The plaintiffs file their amended bill in this cause so as to separate the claim for equitable relief from the claim for relief at law under the petition. The plaintiffs have left the petition to stand for the purpose of prosecuting the action for damages on the law side of the court.

143 This bill will be prosecuted in equity.

(Signed) J. A. CAMPBELL,
T. J. SEMMES,
Sol's for Compl't.

Plea & Demurrer. Filed December 24th, 1881.

U. S. Circut Court.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT MANUFACTURING COMPANY, W. Van Benthuysen, U. Marinoni, B. Laplace, *et al.*, Def'ts named in bill. } No. 9581.

These defendants now renew the defences to the complainants' bill made by exceptions in the State court from whence this cause was removed, dividing said exceptions in this court into a demurrer and plea, the forms in which such defences would have been presented if this cause had originated here, and defendants pray that said exceptions stand as the demurrer and plea to said bill,

144 divided and presented as follows, to wit:

These defendants by protestation, not confessing or ac-

knowledging all or any of the matters in and by the bill set forth and complained of to be true in manner and form as the same are therein and thereby set forth and alleged, severally say they are advised there is cause for demurrer to so much of said bill as asserts that the New Orleans Gas Light Company and the Crescent City Gas Light Company constitute a body corporate under the title of the former, and to so much of said bill as asserts that the complainant has the sole and exclusive privilege to make and vend gas in the city of New Orleans, and to the interrogatories, and to the relief prayed by said bill that the complainant be confirmed in the enjoyment and use of the said sole and exclusive privilege to make and vend gas in the city of New Orleans; that the ordinance of the city council granting to these defendants the right to lay pipes and conduits, and to vend gas be adjudged inoperative, and
145 that defendants be enjoined from asserting any rights under said ordinances, and from vending gas in this city, and these defendants do accordingly demur to such parts of the said bill, and to the relief thereby prayed, and for cause of demurrer say:

That it appears by the bill that the charter of the New Orleans Gas Light Company expired on 1st April, 1875, acts 1854, p. 66, and as adjudged by the supreme court of the State, never was extended beyond that date; that the act of the Legislature of Louisiana of 12th December, 1874, providing for the amalgamation of business or manufacturing corporations does not authorize the union of two corporations beyond the limit of the charter of one of the corporations entering into such union, so as to give to either a chartered life under a new name beyond the end of its corporate existence as declared in the charter, hence if any amalgamation was ever completed between the New Orleans Gas Light Company and the
146 Crescent City Gas Light Company under said act of 1874 it ceased to have effect, and the amalgamated bodies lost their corporate capacity derived from said amalgamation on the 1st April, 1875.

And for further cause of demurrer defendants aver, that if any monopoly to make and vend gas ever existed in favor of the complainant, or of either of the said corporations alleged to have been amalgamated, then said exclusive privilege has been withdrawn and revoked by the constitutional convention of the State, as declared in article 258 of the constitution of the State, which declares that "all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, shall continue as if the said constitution had not been adopted. But the monopoly features in the charter of any corporation now
147 existing in the State, save such as may be contained in the charter of railroad companies, are hereby abolished." And these defendants aver and maintain that said provision in the constitution was and is competent legislation, and deprives complainant of any basis to assert the exclusive privilege to make and vend gas set up in his bill, even if said exclusive privilege had existed before the adoption of said constitution.

And, for further cause of demurrer, defendants aver, that even if said companies had amalgamated under said act of 1874 no exclusive privilege would pass to the consolidated body, even if said exclusive privilege previously existed in favor of either.

And these defendants by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill of complaint contained to be true in such manner and form as the same are therein declared and set forth, these defendants say, they are advised that there is cause for plea to so much of
148 said bill as asserts that the New Orleans Gas Light Company and the Crescent City Gas Light Company constitute a body corporate by reason of having complied with the terms and conditions of said act of 1874 and to the interrogatories, and to the relief prayed by said bill for and on behalf of said alleged corporation, and accordingly these defendants do plead thereto and for cause of plea, say:

That even if said amalgamating act authorized the union of the aforesaid companies beyond the limit of the charter of either made the subject of the preceding demurrer, then these defendants deny that the conditions of said act of 1874 were ever complied with, or that any union of said companies was ever made in accordance with said act; that by the terms of said act the assent of three-fifths of the owners of the capital stock of each corporation was essential to enable it to enter into such union, and was a condition precedent to any such union; but no such assent of the owners of the
149 capital stock of the said New Orleans Gas Light Company was ever given, but that the pretended assent of such shareholders alleged in the bill was not attempted to be given until the 9th April, 1875, after the dissolution of said corporation, when the extinct corporation and those who were its shareholders when its charter expired were utterly incapable of giving the assent required by the act.

And for further cause of plea these defendants say that at the date of the alleged consolidation of the said companies, the Crescent City Gas Light Company had laid no pipes or conduits, nor constructed any works whatever to effect the object of said corporation, nor has it ever laid any pipes or conduits, nor constructed any such works, although by its charter it was required to have its said works completed and in condition to supply gas to the city within ten years from 20th April, 1870, at the date of said alleged consolidation said company was possessed of no
150 property whatever, these defendants aver that the charter of said company was conferred in consideration of the erection by said company of said works for the supply of the city with gas under penalty of the nullity of the charter if said works were not constructed within ten years from the date of the said charter; that the right to purchase the works of the said New Orleans Gas Light Company was already reserved to the city of New Orleans by the charter of said latter company, as shown by its charter of ———, 1835, specially referred to, and these defendants aver that the pretended agreement of consolidation alleged in complainants' bill, by

which the Crescent City Gas Light Company was sought to be dispensed from the fulfillment of the conditions on which its charter depended, was *ultra vires* with regard to said company and against public policy, and is void and of no effect.

And defendant further avers that the said Crescent City Gas Light Company was not at the time of its alleged consolida-
151 tion with the New Orleans Gas Light Company a business or manufacturing corporation within the meaning of said act of 1874.

And these defendants show that it results from the premises that the complainant is not a corporate body, and is without capacity to maintain this suit.

And these defendants, without waiving said plea, but insisting thereon, and answering only in support thereof, deny that they have combined to invade or injure complainant's alleged franchise and property, or that they have disturbed complainant's rights, save that these defendants have organized a company to manufacture and vend gas in this city, as they have a perfect right to do under the constitution and laws, and they deny that they have committed or attempted any fraud and all unlawful combination charged in said bill.

Wherefore these defendants do plead and demur to the complainant's present bill, and humbly pray the judgment of this
152 honorable court whether it behooves them to make any further answer thereunto than as aforesaid, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) MILLER, FINNEY & MILLER,
E. HOWARD McCALEB,
JOHN M. BONNER,
Sol's for Defendants

W. Van Benthuysen, the president of the Louisiana Light and Heat Producing Company, U. Marinoni, B. Laplace, A. Marqueze, James J. Reiss, Henry Gardes, John J. Gidiere, F. N. Thayer, Samuel M. Todd, and W. Van Benthuysen, do severally depose and say: That the demurrer to the complainant's bill, herewith filed, is not interposed for delay, and that the accompanying plea is true in point of fact.

(Signed) W. VAN BENTHUYSEN, *President.*
W. VAN BENTHUYSEN.
U. MARINONI.
A. MARQUEZ.
JAS. J. REISS.
B. LAPLACE.
SAM'L M. TODD.
153 HENRY GARDES.
FRED. N. THAYER.
JNO. J. GIDIERE.

Subscribed and sworn before me Dec. 24, '81.
(Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, Eastern District of Louisiana.

We hereby certify that in our opinion the foregoing plea and demurrer are well founded in point of law.

(Signed) MILLER, FINNEY & MILLER.

Extract from Chancery Order Book, Dec'r 24th, 1881.

NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING COMPANY. } 9581.

The defendants herein, by Miller, Finney & Miller, E. Howard McCaleb, and John M. Bonner, their solicitors, have this day filed their plea and demurrer to the complainant's bill of complaint.

Exception and Motion to set aside Plea and Demurrer filed December 24th, 1881. *Filed February 4th*, 1882.

154

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING CO. *et al.* } No 9581.

The plaintiff aforesaid, by solicitors, file this exception and motion in relation to the paper filed in this cause in this court as demurrer and plea to the bill of the plaintiff, for that the demurrer is in substance and in legal effect a demurrer to the entire bill and to the allowance of any discovery or relief as prayed for, and requiring a decree to dismiss the bill of the plaintiff if the same be sustained.

And that the pleas so called are several, distinct and separate, presenting distinct issues and calling for distinct testimony.

The said several pleas were filed with the demurrer and
155 without the leave of the court, and the whole paper is in effect an answer.

The plaintiff sets down said demurrer and plea so called as irregularly filed, and that the same are not according to the practice of the court, and do not require from the plaintiff any action upon their sufficiency or to make any issue upon them.

The plaintiff prays that the paper be set aside and that the defendants be required to file an answer to the bill before the next rule day, or that a decree *pro confesso* be entered at that date.

(Signed) T. J. SEMMES & PAYNE,
JNO. A. CAMPBELL,
Sol's for Compl't.

Order to Clerk as to Plea and Demurrer filed 24th Dec'r, 1881. Entered in Chancery Order Book Feb. 4, 1882.

U. S. Circuit Court, Eastern Dist. of La.

NEW ORLEANS GAS LIGHT COMPANY
vs.
LA. LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 9581.

156 The clerk will enter in the order book that plaintiff files exception and motion relating to the paper styled pleas and demurrer filed by def'ts 24th Dec'r, 1881.

That the pleas are several and distinct and filed without leave of court, and that the demurrer is to the entire bill, and that pl'ff sets down the demurrer and pleas as irregularly filed and not according to the practice of the court, and that defendants be required to file an answer before the next rule day.

(Signed) JNO. A. CAMPBELL,
T. T. SEMMES & PAYNE, *Sol's.*

Motion & Order, Exception and Motion assigned for Trial. Entered & filed February 10th, 1882.

U. S. Circuit Court, 5th Judicial Circuit, Eastern Dist. of La.

N. O. GAS LIGHT CO.
vs.
N. O. LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 9581.

157 On motion of Henry C. Miller, John M. Bonner, and E Howard McCaleb, solicitors for defendants herein,—

It is ordered that the motion herein made by complainant's solicitors filed on the — day of February, 1882, and styled by them exceptions and motion, be and the same are hereby assigned and fixed for hearing on the 17th day of February, 1882, at 11 o'clock, a. m., and that complainant's solicitors be duly notified hereof.

(Signed) DON A. PARDEE, *Judge.*

Hearing & Submission of Exception and Motion. Extract from the Minutes of Feb'y 17, 1882.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 9581.

This cause came to be heard on the exception and motion of the complainant herein entered in the chancery order book on
158 4th February, 1882.

T. J. Semmes & Payne for compl't; John M. Bonner, E. Howard, McCaleb and Miller, Finney & Miller for def't.

And the court, having heard the argument of said counsel on behalf of the parties they respectively represent, took the matter under advisement.

Order, Exception, & Motion Denied. Extract from the Minutes of Feb'y 23, 1882.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 9581.

This cause came on to be heard on the exception and motion of the complainant herein entered in chancery order book on 4th February, 1882, and was argued by counsel. On consideration whereof it is ordered that said motion be denied.

159 *Plea & Demurrer set down for Argument. Extract from Chancery Order Book, Feb'y 23, 1881.*

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY. } 9581.

Complainant, by J. A. Campbell and T. J. Semmes, its solicitors, now comes and sets down for argument defendant's plea and demurrer.

Motion & Order, Plea and Demurrer assigned for Hearing. Extract from the Minutes of Feb'y 23, 1881.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 9581.

On motion of T. J. Semmes, solicitor for complainant, it is ordered that the demurrer and plea herein filed by the defendants be fixed for hearing together on Wednesday, the 1st day of March next, at 11 a. m., and that defendants have due notice hereof.

160 *Hearing and Continuance of Plea and Demurrer. Extract from the Minutes of March 1st, 1882.*

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 9581.

This cause came on to be heard on the demurrer and plea to the bill of complaint herein.

J. A. Campbell and T. J. Semmes for complainants; Miller, Finney & Miller, J. M. Bonner, and E. Howard McCaleb for defendants.

And, after hearing argument, it was ordered that the matter stand over until Saturday next, the 4th March, 1882, at 11 a. m.

Hearing and Submission of Plea and Demurrer. Extract from the Minutes of March 4, 1882.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING & MANUFACTURING CO. } No. 9581.

161 This cause came on to be heard further on the demurrer and plea of the defendants, and was argued by counsel for the respective parties and submitted; whereupon the court took time to consider.

Opinion of the Court. Filed March 18th, 1882.

United States Circuit Court, Fifth Circuit, Eastern District of Louisiana.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY. } No. 9581.

In Equity. On Demurrer and Pleas.

This case was heard by argument on the several demurrers and pleas filed with the understanding that if the demurrers were
162 overruled the pleas might be set down or put at issue, as counsel might determine.

The question in the case is as to the corporate capacity of the complainant, and its right to sue and stand in judgment.

As all the facts relating to the corporate capacity of the complainant are either stated in the bill or shown by the exhibits thereto, I think the question can be and is fully raised on the demurrer.

It has been argued that the defendants have no right or interest to attack the corporate capacity of the complainant; that such attack can only be made by the State through its attorney general; but I am inclined to think that where defendants are sued on rights depending upon the corporate capacity of the complainant, that such corporate rights may be attacked as a means of defeating the suit.

The bill shows that the New Orleans Gas Light Company was incorporated in 1835, with the exclusive privilege of making
163 and vending gas lights in the city of New Orleans, which exclusive privilege was to expire by act of the Legislature and decision of the supreme court of the State, on the 1st day of April, 1875.

The decision of the supreme court going further and enjoining the New Orleans Gas Light Company from making and vending gas lights in the city of New Orleans after April 1st, 1875.

The Crescent City Gas Light Company was incorporated in 1870 by act of the Legislature, and declared to have and be entitled the sole and exclusive privilege of making and vending gas lights in the city of New Orleans for the term of fifty years from and after

the date of the expiration of the charter of the New Orleans Gas Light Company.

In 1874 the General Assembly of the State passed an act entitled An act to authorize the consolidation of business or manufacturing corporations or companies, approved Dec. 12th, 1874, which provides

"That any two business or manufacturing companies or cor-
164 porations now existing under general or special law, whose objects and business are in general of the same nature, may amalgamate, unite, and consolidate said corporations or companies, and *from* one consolidated company, holding and enjoying all the rights, privileges, powers, franchises, and property belonging to each and under such corporate name as they may adopt or agree upon," and further providing the manner and mode of perfecting the consolidation.

And the bill shows that under this act the New Orleans Gas Light Company, and the Crescent City Gas Light Company consolidated, amalgamated, and united under the corporate name of the New Orleans Gas Light Company on the 29th day of March, 1875.

The question raised by the demurrer is whether the said act applied to these two gas light companies, and whether under that act they could consolidate and unite.

On the 12th day of December, 1874, the Crescent City Gas
165 Light Company was not a business and manufacturing corporation or company. It could not, under the terms of its charter and of the charter of the New Orleans Gas Light Company, make and vend gas lights in the city of New Orleans, or manufacture or do business as a gas company, until April 1st, 1875, the expiration of the charter and the termination of the exclusive privilege of the latter company. The one company could not live as a business company until the other died as a business company. They were not contemporary business and manufacturing corporations or companies. They were not, in contemplation of law, both in existence as such business and manufacturing companies at the time of the attempted consolidation, and at the date of the law, December 12th, 1874. I think it is clear that the Crescent City Gas Light Company was not an existing business and manufacturing corporation or company.

How could it at that time be an existing business and
166 manufacturing company when, without works, pipes or mains, it was not only not doing business and manufacturing, but was prohibited by law from so doing prior to April 1st, 1875.

And, in my opinion, the consolidation act of 1874 did not apply to or intended to include any corporations created by the Legislature and endowed with peculiar and exclusive franchises and privileges. From the nature of the case it could not have been intended that when one company was endowed with a monopoly by the law of the land that there could be another company existing "whose objects and business were of the same nature."

Nor could it have been intended by the said act that the elaborate legislation of 1870 creating the Crescent City Gas Light Company, and the amendatory act of 1873 in relation to the same, was there-

under only to result in extending the charter and monopoly features of the New Orleans Gas Light Company for fifty years, which
167 it is apparent the Legislature had neglected, if not refused, to do directly.

And it is a very serious question with me whether if the said two companies could and did unite under the said consolidation act the life of the amalgamated company could be or was any longer than that of the shorter company so amalgamating.

Under the constitution and laws in 1874 such companies could only be created and endowed by the Legislature, and such charters are not extended by implication or intendment.

And it seems to be undisputed law as derived from the authorities and admitted in argument in this case that when two corporations consolidate under such a law as that of 1874 the old corporations are dissolved and a new corporation created. What is the life of this new corporation? The law is silent. It seems impossible for either corporation to grant a longer life than it has itself.

Whence it ought to follow that the life of the new corpora-
168 tion would only be that of the shorter-lived amalgamating corporation.

And if that is not the case, as the law is silent, the life of the new corporation is indefinite, and subject to the legislative will. In which latter case the new corporation would be subject to the provisions of the constitution of 1879.

However this may be, I am of the opinion that the law of 1874 did not authorize the consolidation of the New Orleans Gas Light Company with the Crescent City Gas Light Company, and that there is in law no such corporation as the alleged complainant in this case, and that therefore the demurrer filed herein should be sustained.

And it is so ordered.

Decree. Demurrer sustained. Bill dismissed. Entered & filed March 18th, 1882.

U. S. Circuit Court in and for the Eastern District of Louisiana.

169 THE NEW ORLEANS GAS LIGHT COMPANY *vs.* THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING CO. *et als.* } No. 9581.

This cause came on to be heard on the demurrer and plea of the defendants to the bill of complaint herein, and was argued by counsel.

On consideration whereof, the court being of opinion that the demurrer is well taken, it is ordered, adjudged, and decreed that the demurrer be maintained, and complainant's bill of complaint be dismissed with costs.

March 18, 1882.

(Signed) DON. A. PARDEE, *Judge.*

Motion & Order for Appeal. Entered & Filed March 28th, 1882.

U. S. Circuit Court, Eastern District of Louisiana. In Equity.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE LOUISIANA LIGHT & HEAT PRODUCING AND MANUFACTURING CO. AND OTHERS. } No. 9581.

170 On motion of John A. Campbell and T. J. Semmes & Payne, solicitors for the complainant in the above-entitled suit, and on suggesting that there is error in the decree rendered and signed on 18th March, 1882, dismissing the bill of complaint and sustaining the demurrer filed by the defendants—

It is ordered that the complainant, The New Orleans Gas Light Company, be allowed an appeal to the Supreme Court of the United States, sitting in Washington, returnable on the second Monday in October next, and that the amount of the appeal bond be fixed at five hundred dollars, and that the bond of the complainant, signed by James Jackson and Thomas J. Semmes, as sureties, now filed, be, and the same is hereby, accepted and approved.

Bond for Appeal. Filed March 28th, 1882.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, The New Orleans
171 Gas Light Company, a corporation created by the laws of Louisiana, domiciled in the city of New Orleans, and James Jackson and Thomas J. Semmes, of the city of New Orleans, are held and firmly bound, jointly and severally, unto The Louisiana Light and Heat Producing and Manufacturing Company, W. Van Benthuysen, U. Marinoni, B. Laplace, A. Marquez, J. J. Reiss, J. J. Gidiere, S. M. Todd, H. Gardes, and F. N. Thayer, defendants in suit No. 9581, hereinafter mentioned, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Louisiana Light and Heat Producing and Manufacturing Company and the said Van Benthuysen, Marinoni, Laplace, Marquez, Reiss, Gidiere, Todd, Gardes, and Thayer, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the 28th day of March, in
172 the year of our Lord eighteen hundred and eighty-two.

Whereas the said New Orleans Gas Light Company having heretofore, to wit, on the 28th day of March, 1882, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 18th day of March, 1882, by the circuit [court] of the United States for th efifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of The New Orleans Gas Light Co., complainant, *vs.* The Louisiana Light and Heat Producing and Manufacturing Company, aforesaid, and the

said Van Benthuysen, Marinoni, Laplace, Marquez, Reiss, Gidiere, Todd, Gardes, and F. N. Thayer, defendants, No. 9581 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden New Orleans Gas Light Company shall prosecute said appeal to effect, and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

173 (Signed) THE NEW ORLEANS GAS LIGHT CO.,
By JAMES JACKSON, *President.* [SEAL.]
JAMES JACKSON. [SEAL.]
THOS. J. SEMMES. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) J. CARROLL PAYNE.

Bond approved. March 28, 1882.
(Signed) EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA, *District of Louisiana,* } ss:

Personally appeared James Jackson, and Thos. J. Semmes, who, being duly sworn, depose and say: That they are the sureties on the within bond; that they reside in New Orleans, and that each of them are worth the full sum of five hundred dollars over and above all their debts and liabilities and property exempt from execution.

(Signed) THOS. J. SEMMES.
JAMES JACKSON.

Subscribed & sworn before me, this 28th day of March, 1882.
[SEAL.] (Signed) CHAS. T. SONIAT, *Not. Pub.*

173½ UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 173 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The New Orleans Gas Light Company *vs.* The Louisiana Light and Heat Producing & Manufacturing Company, No. 9581 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of May, A. D. 1882.

Two (2) words interlined approved.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Don A. Pardee, United States circuit judge for the eastern district of Louisiana, do certify that Francis A. Woodley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of May, A. D. 1882.

Three (3) words interlined approved.

DON A. PARDEE, *Judge.*

174 It is agreed that either party may refer to the entire printed statute of the act entitled "An act to incorporate the New Orleans Gas Light & Banking Company, approved April 1st, 1835," as printed in the sessions acts of the Legislature of Louisiana, as if the same were fully copied herein.

New Orleans, May 9, 1882.

THOS. J. SEMMES,
Sol. for Complainant.
E. HOWARD McCALEB,
Counsel for Defendants.

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Supreme Court of the U. S.

No. 208.

NEW ORLEANS GASLIGHT COMPANY

vs.

THE LOUISIANA LIGHT AND HEAT PRODUCING, AND MANUFACTURING COMPANY, ET AL.,

Appeal from the Circuit Court of the United States, Eastern District of Louisiana.

JOHN A. CAMPBELL,

For Appellant.

JOHN MURPHY & CO., PRINTERS, BALTIMORE.

Supreme Court of the United States,

In the Suit No. 208.

NEW ORLEANS GASLIGHT COMPANY, APPELLANT.

EXTRACTS FROM AN ARTICLE IN THE DICTIONNAIRE OF COQUELIN AND GUILLEMIN AFTER THE WORD EAU (WATER). Tome 1, p. 629.

"History makes mention of the great works constructed in Egypt for the preservation of the waters of the Nile and their distribution, and Asia has preserved traditions of the same character, but the Romans were particularly distinguished for their hydraulic works. Appius Claudius constructed the first aqueduct. After the Appian, there was the old Anio, the Marcia, Tibula, Julia, and the Vierge in the time of the republic. Nearly all of the ancient cities of France preserve remains of aqueducts of Roman origin.

"Philip Augustus, in the twelfth century, introduced water into Paris from the fountains near St. Gervais, but the quantity was inadequate. There is, among the archives, a letter of Francis First, addressed to the prevost of the merchants, requesting that the country house of the Bishop of Castres and Abbot of Ferrieres might be supplied with water, because he was very sick. After expostulations and remonstrances an order was obtained 'that our reverend father in God, Messire Pierre de Martigny, Bishop and Abbot, &c., might draw and cause to be conveyed at his own

charge, a rill of water from the aqueduct of the *size of a pea.*' At this time the principal cities of France are abundantly supplied...

"The question whether a Commune should confide an enterprise of this nature to or charge itself with the work of supply is of interest in an economical point of view. Formerly the supply and distribution of water was a communal expense and undertaking. The industry and the capital were wanting to sustain the cost and risks. This is no longer the case, and cities have a choice between the two systems. The supply provided by municipal authority is generally abundant. With philanthropic intentions more or less provident, the revenue is applied to establishing numerous fountains and gratuitous distributions. The maintenance and support of the works is submitted to persons having no special interest in reducing charges, and as all things done have to be paid for, the revenues from the works are insufficient, general taxes are augmented and the means of the people are diminished.

"Thus the citizens are fully supplied with water, but they consume less of bread, wine, fuel, &c., in consequence.

"If the undertaking is controlled by a private company which accepts the risks of loss and of damage it is clear that they will fix the price of water not upon the basis of the cost, but so as to realize the largest profit, considering they have a monopoly in fact, if not in law. For, when one company has expended the capital necessary to procure the supply, and to distribute it through and along the streets in conduits and pipes, it is not possible that another should do the same so as to compete. This second company must expend the same amount of capital and cannot hope for customers except by diminishing the charges to them, which would diminish the net proceeds. Thus upon a double amount of capital there would be a reduction in the net proceeds and one or both will be ruined. Adding to this, a simultaneous occupation of the streets by several companies would interfere with the pavements and with the comforts of those who would use the streets. The soil would be upturned by the necessity created for repairs of old conduits and

the introduction of new ones. It is apparent that the public authority must intervene, more or less, in the management of this industry.

"So long as it is carried on with small capital; so long as the streets are used only for the transport of water in casks or buckets, perfect freedom may be allowed. Competition, here as elsewhere, will remedy many inconveniences. But when by the improvement of processes the amount of labor employed is diminished by the expenditure of capital; when by the conditions of the industry a monopoly is obtained by the first occupant; when it becomes necessary to employ the public streets not transiently but continuously, the intervention of local authority becomes important and even indispensable. The material inquiry is, how it should be done?

"Let us add that this question of the intervention of authority in production, considered in a more general point of view, acquires each day more of importance.

II.

"It already is presented in the same manner in the industry for GASLIGHTING. There is wanting but some improvement in the manufacture of gas for to find it employed in the industry for heating. In respect to the elements of solution they are various. As exhibited at Paris, the industry of illuminating is a regulated monopoly. We have gas of a good quality with but few inconveniences in respect to the pavements of the streets. Given complete liberty, as at London, you have a fetid gas and a soil upturned. There would be no hesitation on the part of the inhabitant of Paris to pay more than double for the light he has, than for that in London. It is also proper to remark that competition in these industries is always restricted, and this is determining.

"We have seen, in London, five companies using the same streets and having a war of tariffs to the detriment of the quality of the

gas. The consumer who desires to have good products, if he has to pay the price for them, is not provided. As this class is not the most numerous, no one is willing to produce for them."

III. Extract No. 2.

Villey: "*On the* role *of the State in the economical order.*"—p. 212.

"The intervention of the State appears to be both legitimate and necessary in the instance of an industry which cannot be exercised only under the rule of a monopoly in fact. Thus, in respect to railways, competition is impracticable, as experience shows. Therefore the State has the right, and performs a duty by intervening, not only to assure the public security, but also to prevent an abuse of the monopoly. And if a reason is required for such intervention, the answer is ready.

"An industry of this sort cannot be established without the cooperation of the State. It is necessary to intervene, for instance, by expropriation. The power of regulation should be a condition for such concurrence. The principle may be thus formulated. Whenever an industry must of necessity be exercised as a monopoly, we do not mean to include such as arise out of accidental circumstances which may be consistent with a competition, but we refer to such as by the nature of the conditions exclude all competition, it is proper that it should be exercised by the State, or under the control or regulation of the State. Liberty demands such oversight lest it be depressed and impaired."

A reference is made to the Acts of Parliament on the gas and water supply. The early edition was used by me, prepared by Michael & Willis.

In the law library there is a later edition, prepared by Michael alone, and possibly there is an addition.

I refer the Court to this for a discussion.

J. A. CAMPBELL.

Supreme Court of the United States.

No. 208.

NEW ORLEANS GASLIGHT COMPANY

vs.

THE LOUISIANA LIGHT AND HEAT PRODUCING, AND MANUFACTURING COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA.

STATEMENT OF THE CASE.

I.

This case was decided in the Circuit Court, upon a submission of the cause upon the bill, with a demurrer and a plea filed by the defendants. The Court dismissed the bill, sustaining the demurrer without making mention of the plea. Record, pp. 59–61. The bill was filed by the New Orleans Gaslight Company, (appellant.) This corporation was organized and established in March, 1875, in New Orleans, by the amalgamation, union, and consolidation of two corporations: The New Orleans Gaslight Company and the Crescent City Gaslight Company, both chartered by the State of Louisiana to manufacture and to vend gas in New Orleans, each

having a grant of an exclusive privilege to do so in that city, as described in their several charters.

The companies were consolidated under the conditions of an act of the General Assembly, approved 12th December, 1874; and this act is an exhibit to the bill. Record, p. 43. This act allowed two business and manufacturing companies, existing at the date of that act, to amalgamate, unite and consolidate, when the business was in general of the same nature, with the consent of three-fifths of the stockholders; and they were to hold and enjoy the rights, privileges, powers, franchises, and property, belonging to each, and under such corporate name as they may select. The appellant is the result of an agreement among the boards of directors and of three-fifths of the stockholders of the two corporations.

This corporation, according to the bill, has been conducting business since March, 1875, without let or hindrance from the State, or the city of New Orleans, and with the recognition and the acquiescence of both governments.

The defendant is a corporation created under a general law in 1881, and which procured an ordinance authorizing the company to manufacture and vend gas lights in New Orleans, and to excavate the streets, lay pipes, and carry on business in the city. The suit was commenced in the civil District Court of the parish, and was removed to the Circuit Court of the United States, where a bill was filed. Record, p. 25. The demurrer and plea of the defendants followed, and the suit ended in that Court by the opinion and decree of the Circuit Judge. Record, pp. 59–61. The entire case is to be found in the Record, pp. 25–61.

II.

New Orleans Gaslight Company.

The two corporations which were parties to the consolidation agreement each have a history. The New Orleans Gaslight Company successfully introduced gaslighting into New Orleans, under

a charter granted 1st April, 1835. There was a banking privilege also, and the name was the New Orleans Gaslight and Banking Company. The banking privilege was surrendered in 1845; the act was amended in 1845 and 1854. The name was abridged by dropping the word banking; the duration of the charter was till the 1st April, 1875; the maximum price of gas was fixed at four dollars and fifty cents per thousand of cubic feet. In 1860, an act was passed entitled "To extend the area of gaslighting in the city of New Orleans, and to reduce the price now paid by consumers." The company was required to lay down fifteen miles of main pipe, so as to meet the wants of the several districts; they were to lay mains free of charge so as to light the river front, and to reduce the price to four dollars, and never to exceed that price.

The charter was prolonged for twenty years, and the capital was increased $1,000,000; the monopoly feature in the charter was not prolonged. This act was accepted by the company, and the record filed in the office of the Secretary of State as required. It appears in the journals of the legislature that the bill was introduced with the recommendation of the City Council of New Orleans by one of the members from New Orleans; that it was referred to the city delegation in the House of Representatives and reported favorably. That the Judiciary Committee of the Senate reported it; Mr. Randell Hunt, a conspicuous jurist and senator from New Orleans, had charge of it and it was duly approved and promulgated. The City Councils required the company to construct all of the works under the act within a short time, and the price was reduced conformably thereto. This was the condition until 20th April, 1870, when the Crescent City Gaslight Company was incorporated.

III.

Crescent City Gaslight Company.

This corporation was chartered in April, 1870. The charter was compiled from that of the New Orleans Gaslight Company.

They were authorized to lay mains and pipes in the streets, *and to have "the sole and exclusive privilege of making and vending gas-lights in the city of New Orleans for the term of fifty years, from and after the date of the expiration of the charter of the New Orleans Gaslight Company.* The probability is, that the act adopted in 1860, had been overlooked, and that the prolongation of the charter of the senior company had not been noticed. The second act passed in 1873, amending the charter of the junior company, enacted that the charter of the first company terminated the first day of April, 1875. The obvious purpose was to set aside the act of 1860 as nugatory. The objection was made that the title to the act of 1860 did not disclose the object of the act. A suit was commenced in the Superior District Court of New Orleans by this company in 1873, to have a judicial declaration that the charter of the New Orleans Gaslight Company did expire on the first of April, 1875, conformably to the act of July, 1873. The suit was begun in 1873, and terminated in the Supreme Court of Louisiana 1st February, 1875—two months in advance of that date. The District Court dismissed the petition, but the Supreme Court reversed that judgment and rendered a judgment, that the Crescent City Gaslight Company have the sole and exclusive right to make and sell illuminating gas in the city of New Orleans for fifty years, from April 1, 1875; that the act of March 1, 1860, extending the charter of the defendant, the New Orleans Gaslight Company, from April 1, 1875, until April 1, 1895, is unconstitutional and void; and that the defendant be enjoined and inhibited from setting up any claim thereunder, or from attempting to carry on the operation of gas works, or the business of making and vending gas after the 1st April, 1875, or from in any manner impeding the plaintiff from the full enjoyment of the franchises, rights and privileges arising under the acts of 20th April, 1870, and July 10th, 1873." In this remarkable case the Attorney General intervened on behalf of the State to enforce the two acts. The city of New Orleans, under a section of the charter of the New Orleans Gaslight Company, was entitled to purchase the works of the company, at the

termination of the charter, upon a credit, and payable in bonds of the city. The Court decided that this had been repealed in the acts mentioned.

Crescent City Gaslight Co., vs. New Orleans Gaslight Co., 27 La. Ann. Rep., 138–148.

IV.

The defendants had, sufficiently, raised the question in their pleadings, that the invasion of the New Orleans Gaslight Company—whose charter had been amended by the act of 1860, and by the acceptance of that act by the corporation,—was a violation of the Constitution of the United States, and obtained a writ of error and a supercedeas to the judgment of the Supreme Court of Louisiana from the Supreme Court of the United States. No execution was ever had on this judgment, and no judgment was ever rendered by the Supreme Court of the United States. The case was settled by the adoption of the agreement for amalgamation, union and consolidation, bearing date 29th March, 1875.

It will be seen that the New Orleans Gaslight Company had fulfilled all of the conditions of the act of 1860. No complaint by the State or by the city of any failure to perform any duty: the duties imposed by the act were onerous, and as they were performed in a period of civil war, and interrupted commerce, the cost was unusually burdensome. Neither the State nor the city were in any condition to set up such an objection after the full performance of the contract; this was the case for the Supreme Court of the United States. Besides the objection to the title of the act was a mere subterfuge and pretext.

V.

Matter of Controversy.

Amalgamation, Union, and Consolidation of the two Companies.

The agreement bears date the 29th of March, 1875; the boards of directors of each corporation consenting thereto. The stock-

holders concurred and adopted the agreement. We have no case of any dissenting stockholder. The agreement took place under the act of 1874, forming a part of the record, and the bill avers a compliance with all of the conditions of the act. The bill avers that the appellant has been in possession, and enjoyment of the rights, privileges, franchises, and property, and has performed all of the duties required by the acts of the general assembly, since March, 1875, within the city of New Orleans and for the public authorities under contracts made with them. The City ordinance complained of, was passed in January, 1881, nearly six years after the consolidation agreement was adopted. This suit was instituted in May, 1881, full six years after that date.

At that date the New Orleans Gaslight Company was in possession and enjoyment of all of the franchises, rights, and privileges vested in the company under the original charter granted in 1835, and amended in 1845, 1854. The acts chartering the Crescent City Gaslight Company, and the judgment of the Supreme Court, acknowledge a corporate existence of that company, the 29th of March, 1875, as indisputable.

The act of 1860 was in force as matter of fact, for all of its demands had been fulfilled. The nullifying judgment *by its terms* did not go into effect until after the first day of April, and the whole judgment had been removed to a higher revising tribunal, and all of its executory power superceded. This corporation under the act of 1860 had a corporate existance till April, 1895, and a capacity to make and to vend gas. The judgment ceased to have operation by consent of parties and is not *res judicata* between them.

The material questions presented arise upon the opinion of the Court, contained in the record, that the amalgamation, union, and consolidation is not supported by the authority of the statute of 1874. Record, pp. 43, 52–55, 59–61.

The demurrer raises another question much argued in the Circuit Court, whether the constitution of Louisiana (Art. 258)

abolishes the monopoly features of the charters granted to the Crescent City Gaslight Company and do the franchises granted to that company vest in the appellant under the consolidation agreement?

The article in the constitution is copied in the bill of the appellant.

The case decided in the Circuit Court and now presented on appeal is reported, 4 Woods, C. C., p. 90.

VI.

SUPREME COURT OF THE UNITED STATES,

October Term, 1880, *No.* 208.

NEW ORLEANS GASLIGHT COMPANY.

vs.

LOUISIANA LIGHT AND HEAT PRODUCING, AND MANUFACTURING COMPANY, *et al.*

The appellant appears, and complains that there is error in the decree rendered in the cause aforesaid, in the Circuit Court, to the injury of the plaintiff.

For the Court has decreed that the bill of the plaintiff be dismissed, and that the plaintiff should pay the costs of the suit, whereas the Court should have sustained the bill and should have overruled the demurrer and plea of the defendant, and should have decreed that the plaintiff was entitled to the relief as prayed for in the bill.

2. The plaintiff avers, that the New Orleans Gaslight Company from the 29th March, 1875, and thence hitherto was, and is a legal corporation of the State of Louisiana, with all of the general rights of corporations in that State, and with the rights, franchises, privileges, and property described in the charters of the corporations, the New Orleans Gaslight Company, and the Crescent City Gaslight Company, at that date and since that date under and by

the terms of the agreement for amalgamation, union and consolidation; one of which is the sole and exclusive right to manufacture and vend gas in that city under the charters of said companies. That the acts of the defendants infringe the right of the appellant and that the appellant is entitled to the relief as prayed for in the bill. Wherefore the appellant prays a reversal of the decree of the Circuit Court and for costs.

JOHN A. CAMPBELL,
Of Counsel for the Appellant.

ARGUMENT AND AUTHORITIES.

The decision of the Circuit Court, as expounded in the opinion of the Judge of the Court, affirms that the New Orleans Gaslight Company and the Crescent City Gaslight Company, although corporations existing under special acts of the General Assembly, as distinct corporations, on the 12th December, 1874, the date of the statute authorizing the consolidation of business and manufacturing companies, were not competent at that date, nor at the date of 29th March, 1875, to conclude such an arrangement under that act. The reason afforded by the Court is, that the Crescent City Gaslight Company could not, by the terms of the charter of the New Orleans Gaslight Company, make or vend gas lights in the city of New Orleans, or do business as a gas company, until the first of April, 1875, the date of the expiration of the charter, and of the exclusive privilege of the latter company. The one company could not live as a business company until the other had died as a business corporation. They were not, in contemplation of law, both in existence as such business and manufacturing corporations, at the date of the act of December 12th, 1874. The Circuit Court fails here in respect to the matter of fact. The acts of 1870 and 1873 established the Crescent City Gas Company as a corporation with present powers to acquire and convey real and personal property, and to collect capital, borrow money, and to perform all acts necessary to carry on business, with power to

make contracts. There was no impediment to the manufacture and sale of gas, except that arising from the exclusive privilege of the New Orleans Gaslight Company. The statute imposes no prohibition upon any one from manufacturing gas for his own use, and with the consent of the Gaslight Company this company could manufacture and sell it. None could complain of manufacture but this company. Besides, the city of New Orleans of 1835 and 1854 was not the same city as the city of New Orleans in 1870 and 1873. Large districts had been added, and the last section of the act of 1873 provides that these additions and future additions shall be subject to that charter. Record, p. 42. The exclusive privilege of the New Orleans Gas Company did not alter with the changes of the city limits, and did not extend beyond Lafayette.

Pontchartrain R. Co. vs. Lafayette Co., 10 Ann., 741.
Orleans vs. Anderson, 9 Ann., 323.

This company was authorized forthwith to lay pipes in the streets and alleys of the city, and might manufacture gas from all materials suitable, and were required in ten years to supply all of the gas necessary. It would have been competent to the company to purchase the works at any time.

This company could not be coerced into an infringement of the special privileges of the older company, but there was no law to hinder the companies from co-operating at any time in arrangements which did not merge one into the other. This last act probably required an act of the Legislature like that of 1874. But the New Orleans Gaslight Company was competent under the law to determine upon their rights, and to waive the benefit of the exclusive privilege created by law in their favor. Neither law nor good morals prevented such an act.

"In all cases in which it is not expressly or impliedly prohibited, they (individuals) can renounce what the law has established in their favor, when the renunciation does not affect the rights of others, and is not contrary to the public good." C. C., Art. 11.

The act of the 12th of December, 1874, designates business and manufacturing corporations then existing, as parties, which could be united under the provisions of that act. The boards of directors might make an agreement according to the conditions of the act, which should be operative by the concurrence of three-fifths of the stockholders. The assent of these parties formed two corporations, into *one consolidated company*, with such name as the parties might adopt. The bill represents the agreement to have been unanimously adopted by the stockholders of each one of the companies. The bill avers the transfer of rights, powers, privileges, franchises, property in 1875; and quiet enjoyment till the invasion of these defendants in 1881 to the one consolidated company, called in the agreement the New Orleans Gaslight Company, by consent of all parties. This is a suit by this new company constituted under the act of 1874. The defendants are not shareholders of either of these corporations, seeking to cling to something which had once been their own, and of which they had been despoiled by some unauthorized action of their associates. These defendants unite in 1881, with a project of their own, to invade the grants conferred by competent authority upon the plaintiff. In some of the English cases, such persons are called interlopers. Their ponderous name and high pretensions are characteristic of such parties.

We find, that they rest their hopes upon some expectation, that some flaw may be found in the draught of the agreement for consolidation.

But a Court does not look favorably upon such criticisms upon the purport or purpose of the act of 1874. Lord Justice James in the English Chancery, has remarked upon such discussion. He says: "I may repeat what I said in a former case, that I do not think we ought to be astute to find grounds for upsetting amalgamations; because, if the thing be really done honestly the amalgamation of two weak companies is far from being a prejudice to the persons who claim. It is like putting two weak

hives to make a strong one and capable of carrying on its business at a profit when the two separately might come to an end. I do not think we ought to seek reasons, that it was *ultra vires*, or that it was a fraud."

In re European Society; Homan's case, 3 Ch. D., pp. 21, 27.
In re Emp. Association, 6 Ch. App., p. 266.

This consolidated association cannot exert a single power, right, privilege which the General Assembly has not confirmed in all the forms of legislation. Were this corporation dissolved, one of the number (Crescent City Gaslight Company) has a charter for every right, privilege, and power that belongs to the consolidated company.

No disability is imposed upon these defendants or upon any others, which is not founded upon legislation of the State prior to the act of consolidation. The Consolidated Company holds and enjoys under the agreement of consolidation, only that which belonged to their constituents before that agreement, under the laws of the State and decisions of the Courts.

Lightner vs. Boston, 1 Lowell decis., 338.

VII.

This exposition will enable us to examine the doctrine of the opinion delivered in the Circuit Court.

The Court say, "the act of 1874 was not intended to include corporations, created by the Legislature, and endowed with peculiar and exclusive franchises and privileges. It could not have intended that when one company was endowed with a monopoly by the law of the land, that there could be another company existing, whose objects and business were of the same nature; and could it have been intended, by the act, that the elaborate legislation of 1870 creating the Crescent City Gaslight Company, and the amendatory act of 1873 in relation to the same matter was, thereunder only to result in extending the charter, and monopoly

features of the New Orleans Gaslight Company for fifty years, which it is apparent the Legislature had neglected if not refused to do?"

There is much confusion in the statement in this paragraph. No one has pretended that the charter of the New Orleans Gaslight Company—the company chartered in 1835—has been extended an hour. The name of that company was adopted by the authority of the act of 1874, as the name of the "one Consolidated Company" formed by the two corporations in the agreement of consolidation. Any other name might have been chosen and the result to the new Consolidated Company would have been the same.

Nor can we appreciate any wonderment or surprise that there should have been two corporations having exclusive privileges which were in a condition to combine with the sanction of the Legislature. After the privileges are thus granted, the consolidation of the companies does not enlarge their scope, or their effect. The grants of exclusive privileges operated upon different periods of time. The grant to the New Orleans Gaslight Company of exclusive privilege terminated in April, 1875. The grant to the other company followed upon that grant from that date. This second company had a grant covering New Orleans as existing in 1875, and should exist henceforth. The grant to the New Orleans Gaslight Company embraced the New Orleans of 1835 and Lafayette. If the Legislature intended to exclude such corporations from the operation of the act why use words that did so completely include them? This act bears date the 12th December, 1874. The decision in this case in the Supreme Court of Louisiana was made 1st February, 1875—some seven weeks after the act was passed, while the case was under advisement. It would seem that if the subject was at all considered by the Legislature, that the act would have been formed in advance to avoid any mischief, if any mischief could have possibly resulted in their opinion.

The act is clear, precise and direct. It determines that *any two business and manufacturing corporations now existing* under *general*

or *special* law may amalgamate, unite, and consolidate said corporations, if their business and objects are in general of the same nature.

Scientific, literary, charitable, or ecclesiastical corporations are not included. So, perhaps, banking, insurance, navigation companies are not. The companies included are such as manufacture and vend commodities. They must have charters and organization to carry on business. The act does not say that they must be flourishing or active. Their object must be of the same general nature; the act is an enabling act applicable to all.

The Crescent City Gaslight Company had a legislative charter, imposing duties, and obligations, and conferring unusual franchises. It was organized, and we find it in Court claiming to have the field made clear for them, they appear with the encouragement of the State as represented by an attorney general.

Certainly, there is no evidence that the corporation was in any embryo condition awaiting the death of the other for its parturition.

A number of cases have been determined in this Court, where one of the parties to the amalgamation agreement has had a peculiar or special privilege without creating any bewilderment in the Court. The privilege was not forfeited, waived, nor enlarged, nor diminished. The Court recognized and afforded to it protection for its precise value.

P. W. B. Co. vs. Maryland, 10 H., 376.
Tomlinson vs. Branch, 15 Wall., 460.
Central R. Co. vs. Georgia, 98 U. S., 670.
Branch vs. Charleston, 92 U. S., 677.

In the case of railroads the special privileges affects a section of the railroad only, and in that case the privilege is limited to this section.

In the case before the Court, the Crescent City Gaslight Company holds the special privilege for a longer duration then the

senior company did, and it comprehends a greater scope of territory. The one consolidated company, practically, at this date is operating under the Crescent City Gaslight charter. All of this was submitted by the act of 1874, to the determination of the boards of directors, and the shareholders of the companies.

We do not hear of complaints from these parties interested. The Supreme Court of the State of Louisiana has had this subject under consideration, and the opinion of that Court has placed the subject in a very clear light in a well considered and practical opinion.

Fee vs. Gas Co., 35 Ann.

The civil code in Louisiana has adopted rules by which the intentions of the Legislature may be determined. These seem to discard anything like conjectures, or surmises, or mere speculations as to the possible intents of the Legislature.

Article 13 of the civil code is: When a law is clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

Article 14. The words of a law are generally to be understood in their most usual signification, without attending so much to the niceties of grammar as to the general and popular use of the words.

Article 20. The distinction of laws into odious laws, and laws entitled to favor, with a view of narrowing or extending their construction, cannot be made by those whose duty it is to interpret them.

The clear, unambiguous expression of the act is, that *any two* business and manufacturing corporations *then existing* under special charters, whose business and objects are alike, shall have authority to amalgamate, unite, consolidate, and form one consolidated company, with such name as they may adopt. There is no mention here of the peculiarity of their privileges, nor of the identity of their faculties, rights, privileges, property.

The importance of these rules is manifested in the case before us. Here is a company which, for a series of years, has transacted

business with a very large proportion of the population of New Orleans, without a question of their competency to do so. Large capital is invested, and frequent changes in ownership occurs, upon the full conviction that all is according to law. When the case comes for argument, the corporation is refused a hearing upon a surmise or a conjecture, that the intention of the Legislature may, by some peradventure, have been variant from the plain written law. A positive law, dealing with rules or rights of property, cannot be discussed upon a theory, much less upon a surmise or expression of doubt of a Judge. The hardship or inconsistency, if there were either, cannot disturb the application of a general rule. The law does not concern itself with possible cases of hardship or inconsistency. It refers to principles and results. If Courts, in their discretion, can take cases out of rule, and decide them upon any imagination or suspicion that the rule was not made for that case, there would soon be no rules, and so no laws. When statutes are free from ambiguity, a Court cannot investigate their expediency. Under a government of written laws the Courts are only interpreters of the legislative will.

Hotord vs. Hotard, 12 A., 148.

Johnson vs. Bloodgood, 12 A., 699.

VIII.

Decision in the Supreme Court of Louisiana.

The Supreme Court of Louisiana in the year 1883, determined the case of Fee vs. The New Orleans Gaslight Company, 35 Louisiana Ann., p. 413. The defendant in that case is the same corporation which is appellant in this case. The suit was brought by the plaintiff to recover shares of stock in this consolidated corporation, because of his ownership of stock in the Crescent City Gaslight Company. The charters of the respective corporations which were merged in the one consolidated company and which assumed the name of the New Orleans Gaslight Company were

before the Court, as well as the articles of association which were adopted by the boards of Directors and three-fifths of the shareholders of both. The Supreme Court passed upon the sufficiency of those articles, and of their legal operation under the act of 1874, as follows:

The opinion of the Court was delivered by

FENNER, J. On the 29th of March, 1875, the New Orleans Gaslight Company and the Crescent City Gaslight Company, two corporations chartered under the laws of this State, amalgamated, united and consolidated themselves into one consolidated company, in pursuance of the provisions of an Act of the General Assembly, No. 157 of 1874, entitled, "An Act to authorize the consolidation of business or manufacturing corporations or companies."

That Act authorized such consolidation into "one consolidated company, holding and enjoying all the rights, privileges, powers and franchises belonging to each, and under such corporate name as they may adopt or agree upon," the consolidation "to be made by agreement in writing, by or under authority of the board of directors and the assent of the owners of at least three-fifths of the capital stock of each of said corporations."

All requirements of the Act were fully complied with.

The name adopted for the consolidated company was "The New Orleans Gaslight Company." . . . .

"It is contended that the consolidation does not give plaintiff a right of action against the new company.

"We cannot take this view.

"The articles of consolidation and the legislative Act by authority of which they were executed, evidently present a case of complete and perfect amalgamation, the effect of which was, under American authorities, to terminate the existence of the original corporations, to create a new corporation, to transmute the members of the former into members of the latter, and to operate a transfer of the property, rights and liabilities of each old company to the new one. Brice *Ultra Vires*, pp. 606–608, 637; Field on Corporations, Sec. 434; Indianapolis R. R. vs. Jones, 29 Ind., 465; Paine vs. Lake Erie, 31 Ind., 283.

"These authorities, and the reason of the matter, satisfy us that plaintiff can and must look to the defendant company for the satisfaction of whatever rights he had against the Crescent City Gaslight Company, in the mode and on the terms provided in the articles of consolidation."

"Numerous authorities are cited in support of the general proposition above stated; but their inapplicability results from the fact that he is not affirming, but only submitting to the contract. He was no party to the contract, and he is bound thereby just in so far as the contracting parties had the right to bind him, and no further. The law conferred upon three-fifths of his fellow-stockholders the power to effect a consolidation without his consent and even against his will, and he is bound by that consolidation and by the legal effects thereof, which we have heretofore stated. But the law did not confer upon three-fifths or ninety-nine one hundredths of the stockholders, the power to place his rights as a stockholder on a different and inferior footing to their own rights as stockholders in equal case; nor did it confer upon them the power, without his authority, to transfer his rights to any third person whatever. He has the right to repudiate any such attempt. Bound by the consolidation, he is entitled to the same rights in the new company which were secured to his fellow-stockholders, and no payment or delivery to any unauthorized third person can be set up in satisfaction of those rights."

IX.

We pass from the opinion of the Circuit Judge to the questions suggested by the demurrer, and the plea, which were set down and heard together. The 258th article of the Constitution of Louisiana adopted in 1879, provides "all rights, actions, prosecutions, claims, and contracts, as well of individuals, as of bodies corporate, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, shall continue as if this constitution had not been adopted, *but the monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charter of railroad* companies, are HEREBY ABOLISHED."

It will not be denied that the grants contained in the charters of the two gas corporations of exclusive privilege are contracts within the terms of the 10th section of the first article of the Constitution of the United States. In two decisions of the Supreme Court of Louisiana, this conclusion has been adjudged, and the

same effect has been given to a similar clause in the decisions of this Court.

9 Rob. La. R., 411; 27 La. Ann., 147.

Slaughter-house cases, 16 Wall., 36; 110 U. S. R.

The power of a State to grant such exclusive privileges was vindicated by the Supreme Court of Louisiana, with very great force a half century ago, by Chief Justice Martin.

Pontchartrain R. Co. vs. Orleans R. Co., 15 La., 404, employing arguments similar to those of Kent and Thompson, in the case of Livingston vs. Van Ingen, 9 Johnson, pp. 507, 516, 563. In Louisiana the precedent has been followed.

Pontchartrain R. Co. vs. N. O. R. Co., 11 Ann., 253.

Drainage Co., 11 Ann., 388.

Slaughter-house Co., 4 Woods, 96; 22 Ann., 544.

New Orleans Waterworks vs. St. Tammany, 4 Woods, 360.

In other States, navigation companies, transportation companies and gas companies have had similar grants.

Perron vs. Sykes, Day's Cases in Error, p. 19.

Boston vs. Salem, 1 Gray, 1.

Bertemeyer vs. Iowa, 18 Wall., 128.

Dillon, Mun. Corp., Sections 546–549.

At the date of the articles of association, between these gas companies, they possessed an operative grant of the sole and exclusive privilege to manufacture and vend gas in New Orleans. This privilege of the New Orleans Gaslight Company had a few days to run; the other corporation was endowed with the privilege for a half century afterward. The effect of the association has been declared in the case we have already cited to be "*the holding and enjoying all the rights, privileges, powers, and franchises belonging to each, and under such corporate name as they may adopt and agree upon.*"

Fee vs. New Orleans Gaslight Co., 35 Ann., 413.

X.

Some monopoly features in the constitution of a gas company are inherent, and indelible, and appear in a number of similar undertakings. Canals, docks, lighthouses, bridges, ferries, gasworks, waterworks, railways, post-office, telegraph, without a grant of exclusive privilege cannot be well regulated, and in some cases cannot be regulated by competition. They supply a necessity; they are favored by the selection of the spot or line best suited for the work. A gas or water company occupies streets, a dock or wharf needs a position on the water. They supply a locality in close connection with their machinery or plant. The machinery is costly, and when once erected the owner can meet every demand without great increase of cost. There is no occasion to duplicate the plant or machinery in order to double the supply, the supply can be increased indefinitely at a proportionately moderate cost. The use of gaslighting began in London. The construction of gasworks for supplying gaslights within cities and towns has generally been accomplished by chartered, or joint stock companies. Since the act of 15 Victoria, Ch. 15, a corporation is required. No interference with the streets of a city can take place without a parliamentary grant or license.

Atto. Gen. vs. Cambridge, 38 L. J., 94.
L. R., 4 Ch., 71.
Ellis vs. Sheffield Gas Co., 2 E. & B., 767.
Pudsey Gas Co. vs. Bradford, L. R., 15 Eq., 167.

In the metropolis gas act, 23–24 Vict., Ch. 125, thirteen separate corporations supply gas to the same number of separate districts. Each company having a separate district.

Parliament sanctioned this arrangement, and regulates the manufacture, distribution and sale of gas through the city. The act provides in respect to quantity, quality, and distribution of gas; the price of gas; methods of settlement of disputes between the company and customers, and the dividends allowable.

Michel and Willis, Gas and Water supply, p. 100–121.

In the Kingdom outside of London there are 1,217 gas companies with a capital of £16,000,000; in London, 13 companies with a capital of £8,000,000.

There are seventy-five instances of ownership of the works by municipal corporations. It is difficult to obtain information in this country. The census returns not having been published.

New York is supplied by companies; so Baltimore; so New Orleans; so Boston and Washington city. Philadelphia owns the works and there has been a great outcry in respect to corruption, mismanagement and frauds in that city. In the charter of 1835 there was reserved a privilege to the city of New Orleans to purchase the works of the New Orleans Gaslight Company after 1875, upon an appraisement, and upon a payment to be made in bonds. This was repealed by the act of 1870, creating the Crescent City Gaslight Company, as the Supreme Court decided in the suit between the corporations, and the intervention of the city was dismissed. The act of Victoria, above cited, recites as a motive for that act "*in order to economise capital and avoid the too frequent opening of the streets.*" In an appendix we place several attestations in respect to the matter of monopoly, so as to get some definite opinion as to what is the signification of that word in this connection.

XI.

"The relation of the public to the gas companies does not materially differ from its relation to the railroad corporations. It is practically dealing with what, from the nature of things, must be a monopoly. The manufacture and sale of gas are not to be considered similar to other branches of manufacturing. When extraordinary profit is realized from other branches of manufacturing, new capital is attracted, and profits find their level. New gas companies cannot be established within the same territory. Competition is not to be relied on to control prices in the manufacture and sale of gas, any more than in the reduction of transportation

charges on railroads. Competition in each case is only incidental, and while railroad and gas corporations may, for a time, engage in competition, it is only for the purpose of eventual combination, in which the public interest must suffer. In the early days of railroads in this country and England, competition was regarded as a sovereign remedy for high rates of transportation; but the result has shown a vast waste of capital, and compelled the public to pay interest on lines which should never have been built. In gas companies the result has been the same wherever competition in the same district has been carried to its legitimate and necessary issue. But one line of mains was necessary to supply the public wants, and wherever two were laid, in some form or other the consumer must pay the cost upon the necessary expenditure. Such a competition has led to precisely the result which might have been expected—a combination of, and a compromise between, the companies, and increased rate for gas to the consumers, to pay the interest on an unnecessary outlay of capital."

This extract is made from a report of a commission selected in the city of Boston about 1876. This was adopted in Cincinnati after an elaborate inquiry in 1881. And a number of reports from the committee of the District of Columbia adopt a similar course of reasoning, and charters for new companies were disallowed. In 1875 it was competent to the city of New Orleans to have purchased the gas works of the New Orleans Gaslight Company by the reservation contained in the 42d section of the charter of that company. The city intervened in the suit then pending for the protection of this privilege. The Supreme Court determined that the acts relative to the Crescent City Gaslight Company were repugnant to the act of 1835, and repealed the reservations in favor of the city. The city did purchase the waterworks under similar reservations in another act, but the city retained the property but a short time, and they are now in the hands of a private corporation chartered in 1877, two years before the adoption of the constitution of 1879. The Circuit Court of the United States

maintained the monopoly features of that company, irrespective of article No. 258 of the constitution.

Waterworks vs. St. Tammany, 4 Woods, C. C. R.

The bill of the appellant asserts a corporate character and a franchise unlawfully and injuriously invaded under such conditions that there does not exist an adequate remedy elsewhere than in the Court of Chancery.

XII.

The fact appears that the manufacture and sale of gas in New Orleans, from its introduction in 1835, till the present date, has been conducted under legislative charters, by organized companies, endowed with special privileges to do so in exclusion of other persons, and that the Courts have supported their rights. The streets of a city are public things, and the use of them is regulated by the legislative authority. In this instance the State has empowered the appellant to use them for distribution of gas to the exclusion of others, for that purpose. This is the contract existing at the time the constitution of 1879 was adopted. We have considered the nature of the use to be made, and the character of the monopoly we have seen, it has been deemed a suitable subject for legislative grant, and is now used for that purpose, under a special grant. The defendants claim that since the constitution of 1879 was adopted, that this *grant is abolished*, and must be *expunged* from the charter of this company.

Justice Woodbury, in the opinion delivered in Planters' Bank vs. Sharp, 6 H., 301, enumerates instances of acts of the legislatures of States which the Court has condemned. "Let a charter or grant be expunged, as in the case of the Yazoo claims in Georgia, and no one can doubt that the obligation of the contract is impaired, 6 Cr. So if the State expressly engages in a grant that certain lands shall never be taxed, and that a law be afterwards passed to tax them, 7 Cr., 164; or that corporate property and franchises shall be exempt, and they are then taxed, 3 H., 133.

So, if lands are granted for one purpose and an attempt is made to appropriate them to another; or if a charter be deemed private rather than public, 9 Cr., 292; 4 Wh., 578.

This list may be lengthened, and we have collected a number of cases decided in this Court, and in Louisiana and other States pertinent to the discussion of this case. Among them to a *judgment* upon which the structures of the appellant have rested as on a sure and solid foundation since the 29th of March, 1879. The observations of Chief Justice Taney in a cause of great importance have always seemed to be cogent and applies with directness to case now presented. It is a remarkable opinion, and the case was novel in this, that the minority who opposed the judgment concurred in the opinion, while the majority of those who supported the judgment reserved, or declined to accept the opinion. They did not dissent. The paragraph quoted in this brief, expresses the current doctrine of the Courts with earnestness and eloquence. He says:

"There are undoubtedly fixed and immutable principles of justice, sound policy and public duty which no State can disregard without serious injury to the community and to the individual States who confer it, and contracts are sometimes incautiously made by States as well as individuals; and franchises, immunities and exemptions from public burdens improvidently granted.

"But whether such contracts should be made or not is exclusively for the consideration of the State. It is the exercise of an undoubted power of sovereignty which has not been surrendered by the adoption of the Constitution of the United States and over which this Court has no control. For it can never be maintained in any tribunal in this country that the people of a State, in the exercise of the powers of sovereignty, can be restrained within narrower limits than that fixed by the Constitution of the United States upon the ground that they make contracts ruinous or injurious to themselves."

The Chief Justice proceeds to follow the principle he had stated to its consequences, and it is the paragraph which we now extract which has a weighty power in this discussion. He says:

"It is equally clear upon the same principle, that the people of a State may, by the form of government they adopt, confer on their public servants and representatives all the power and rights of sovereignty which they themselves possess; or may restrict them within such limits as they deemed best and safest for the public interest.

"They may confer on them power to charter banks or other companies, or accept a specified amount less than their fair share of the public burdens. This power may be indiscreetly and injudiciously exercised. Banks and other companies may be exempted, by contract, for their equal share of taxes, under the belief that the corporation will prove a public benefit.

"Experience may prove it is a public injury. *Yet if the contract was within the scope of the authority conferred by the Constitution of the State, it is like any other contract made by competent authority, binding upon the parties.* Nor can the PEOPLE or their representatives, by any act of *theirs afterwards, impair its obligation.*

"*When the contract is made the Constitution of the United States* acts upon it and declares that it shall not be impaired, and makes it the duty of this Court to carry it into execution. That duty must be performed."

Ohio L. & T. Co. vs. Debolt, 16 How., 416–428–9.

JOHN A. CAMPBELL,
For Appellant.

APPENDIX.

"When, in any employment, the *regime* of independent small producers has either never been possible, or has been suspended, and the system of many work-people under one management has become fully established, from that time any further enlargement in the scale of production is generally an unqualified benefit. It is obvious, for example, how great an economy of labor would be obtained if London were to be supplied by a single gas or water company, instead of the existing plurality. While there are even as many as two, this implies double establishments of all sorts, when one only, with a small increase, could probably perform the whole operation equally well; double sets of machinery and works, when the whole of the gas or water required could generally be produced by one set only; even double sets of pipes, if the companies did not prevent this needless expense, by agreeing upon a division of the territory. Were there only one establishment, it could make lower charges consistently with obtaining the rates of profit now realized. It is, however, an error to suppose that prices are ever permanently kept down by the competition of these companies. Where competitors are so few they always end by agreeing not to compete. They may run a race of cheapness to ruin a new candidate, but as soon as he has established his footing they come to terms with him. When, therefore, a business of public importance can only be carried on advantageously upon so large a scale as to render the liberty of competition almost illusory, it is an unthrifty dispensation of the public resources that several costly sets of arrangements should be kept up for the purpose of rendering to the community this one service. It is much

better to treat it at once as a public function and if it be not such as the Government itself could beneficially undertake, it should be made over entire to the company or association, which will perform it on the best terms for the public. In the case of railways, for example, no one can desire to see the enormous waste of capital and land—not to speak of increased nuisance—involved in the construction of a second railway to connect the same places already united by an existing one; while the two would not do the work better than it could be done by one, and after a short time would probably be amalgamated. Only one such line ought to be permitted; but the control over that line never ought to be parted with by the State, unless on a temporary concession, as in France; and the vested right which Parliament has allowed to be acquired by the existing companies, like all other proprietary rights which are opposed to public utility, is morally valid only as a claim to compensation."—*J. S. Mill, Political Economy, p.* —.

REPORT OF COMMITTEE OF CONGRESS.

"*The Committee for the District of Columbia, to whom were referred House Bills Nos.* 924, 1368, 1527 *and* 1705, *all relating to the organization of Gaslight Companies in the City of Washington, report as follows:*

"That House bills Nos. 924, 1368 and 1705, 45th Congress, are bills to incorporate companies, and House bill No. 1527 is a general law upon the subjects.

"The committee are of the opinion that in the furnishing of illuminating gas in the city of Washington, the United States, the District of Columbia, and the people of the said District have common interests, to wit, good and cheap illuminating gas. The price of such gas depends upon the cost of construction and maintenance of gas-works and the appurtenances, and the amount of gas consumed. Two gas-works would double the cost without any

increase of the consumption of gas. The construction of new gas-works would necessitate the tearing up of sidewalks and the streets at the crossings.

"A law authorizing other parties to construct gas-works is liable to abuse and to do great public injury, in this, in forcing the present company to buy them off, and thereby necessarily increasing its capital stock or liabilities, and thereby increasing the price which the said company would be reasonably justifiable in charging for gas.

"For the above reasons, the committee are of the opinion that authority should *not* be given to any other person, company, or corporation to erect and maintain gas-works in the city of Washington, unless there exists an imperative necessity therefor.

"That there is no necessity therefor is apparent, because the United States, by law, has the right (and has asserted such right), and which right the Washington Gaslight Company recognizes, not only to fix the quality of the gas furnished by said company, but also its price, and to make such regulations for the government of said company as may be necessary to protect the United States, the District of Columbia, and the people thereof.

"There is now an act of Congress regulating the Washington Gaslight Company, not only as to the quality of the gas furnished, but the price to be paid therefor, and for inspection, &c. The provisions thereof are as guarded and stringent as can be found in the law of any State.

"There is a bill now pending in this House to reduce the price to be paid said company for gas furnished.

"For the aforesaid reasons the Committee recommend that neither one of the aforesaid bills do pass."

REPORT OF COMMITTEE.

"The Committee on the District of Columbia, to whom were referred the bills H. R. 2509 and H. R. 2514, together with

various petitions, protests, and other papers, all relating to the organization of gaslight companies in the city of Washington, having had the same under careful consideration, respectfully submit the following report. Each of the bills provides for the incorporation of a new gaslight company.

"The object to be sought in devising means for the illumination of Washington City is an illuminating material of good quality, that shall be sold at a fair and just rate for public and private consumption, and distributed throughout the city in such a manner as will best subserve the interests and convenience of its inhabitants. Will this object be secured by a plurality of gaslight companies? In the opinion of your committee, it will not. The quantity of gas consumed will remain the same, while the cost of its manufacture and distribution will be increased by reason of the works, pipes, appurtenances, and labor necessary for each additional company.

"The injury to the city, the interruption to public travel, the detriment to all business by tearing up streets, pavements and reservations, will be increased in the same ratio. The advantages offerred to be set over against these manifest objections are, in one bill, a cheaper gas for all consumers; in the other, gas of greater illuminating power, to be furnished at a cheaper rate for use in the public buildings and reservations, and the price to private consumers remaining as at present. If these advantages were of real and enduring value, and were, moreover, such as could be secured in no other way, even then the wisdom of their purchase by the proposed expenditure of capital and convenience would be doubtful. But when it is seen that they are easily within reach by less expensive methods, and are nominal and transient in the plans submitted, the unwisdom of securing them in that way is clearly apparent. The history of gaslight companies, so far as known to your committee, is almost invariably in this regard: that when opposition has started, it has been either for the purpose of compelling, or has resulted in, a purchase of one company by the

other, or a division of territory between them, with uniform rates; so that, although competition may lower the price of gas for a time, it always ends in a compromise between the companies and an increased rate for gas to the consumers, to pay the interest on the unnecessary outlay of capital. This fact has long been recognized in Europe, where London is the only city of importance in which more than one gaslight company is allowed. Your committee think, with Stuart Mill, that 'it is an unthrifty dispensation of the public resources to have several costly sets of arrangements kept up for the purpose of rendering to the community, one service, when one set could perform the service equally well!' The true protection for the interests of all concerned is to treat the production of an article which is now almost a necessity in every household as a public function. If it be a function that the government itself can not properly undertake, it can be delegated to one company stringently regulated by law.

"This view Congress has already practically enforced by chartering the Washington Gaslight Company, and prescribing regulations, which it can change at will, for the purity, power and price of the gas to be furnished thereby. It is shown by the reports of the inspector of gas and meters, appointed by the President and confirmed by the Senate of the United States, that the Washington Gaslight Company fully meets the requirements of the law on the subject, and that the city of Washington is supplied thereby with gas of good quality at a price comparatively as low as that charged in any city in the United States.

"For the reasons aforesaid your committee are of opinion that no other gaslight company should be incorporated in the city of Washington, and therefore recommend that neither of the above named bills do pass."

"Gas companies and water companies stand precisely in the same relation to the community as railway companies.

"They have the power to exact monopoly rates simply because the plant once supplied gives to the persons or corporation who supply it, an extraordinary power over others who propose to come into the business.

"Those who come into the business come not to supply a superior article at lower rates as in ordinary businesses, but to divide the field. And they soon discover that to divide the field profitably they must maintain rates, and therefore two mains are frequently laid side by side in large companies, when one would suffice to supply all the necessary gas. The community is no better served, the same rules are maintained as to gas that have existed theretofore, and the same poor commodity furnished because the individual householder does not stand in a position of equality with the corporation that supplies her.

"The community, therefore, in such cases, is generally the loser, as to capital of all that portion of plant which occupies the same field, with means of abundant supply on the part of the existing corporation before the competitor came in. The same rule applies to water supply."—*Cyclopædia of Political Science, &c., I. Vol., verbo Monopoly, p.* 896.

115-650

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 208.

THE NEW-ORLEANS GAS LIGHT COMPANY, APPELLANT,

vs.

THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY ET ALS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Additional Brief for the Appellant.

WM. D. SHIPMAN, *of Counsel.*

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ADDITIONAL BRIEF FOR PLAINTIFF AND APPELLANT.

Without following all the details of the full and lucid statement of the case to be found in the principal brief filed herein, I shall refer only to such facts as are necessary to bring into prominence the principal questions on which the controversy, as I understand it, turns.

The plaintiff and appellant is a corporation, formed in March, 1875, by the consolidation of two corporations then existing under the laws of the State of Louisiana, viz., "THE NEW-ORLEANS GAS LIGHT COMPANY," chartered by an Act of the Legislature in April, 1835, and "THE CRESCENT CITY GAS LIGHT COMPANY," chartered in April, 1870.

The fact that the new corporation, the present plaintiff, took the name of one of the old companies out of which it

was created, is an immaterial incident, in no way affecting the present controversy.

As already stated, the consolidation took place in March, 1875, and the character and powers of the two corporations at the date of their amalgamation should be kept in view.

1. The original "New-Orleans Gas Light *and Banking* Company," chartered April 1, 1835, was, among other things, clothed with the exclusive power of vending gas lights in the City of New-Orleans, as will be seen by the 36th section of the charter, (*Record*, p. 34,) as follows:

"SECTION 36. *Be it further enacted, etc.*, That the New-"Orleans Gas Light *and Banking* Company, their succes-"sors and assigns, shall have and be entitled to the sole and "exclusive privilege of vending gas lights in the City of "New-Orleans and its faubourgs and the City of La Fayette, "to such persons or bodies corporate who may voluntarily "choose to contract for the same."

It will be observed, that no express limitation of time, within which the right conferred by the above section was to terminate, was named; but on the 10th of March, 1845, the Legislature passed an Act accepting the surrender of the banking powers conferred by the original charter, and limiting the life of the corporation to forty years from April 1, 1835—in other words, the charter was to expire April 1, 1875. This change was accepted by the corporation, and it was thenceforth simply a Gas Company, under the corporate name of "THE NEW-ORLEANS GAS LIGHT COMPANY." (*Record*, pp. 35, 36, 37.)

There were other provisions of this amending Act, which need not be mentioned here. Two other Acts in relation to this Company were passed by the Legislature, one March 15, 1854, and the other March 1, 1860, and are printed in this *Record*, (pp. 37, 38, 39.) But it is not necessary for my present purpose to dwell upon them now. It is sufficient to say, that the original "NEW-ORLEANS GAS LIGHT COMPANY" was a legally existing corporation, chartered by the State, and vested with the exclusive franchise of vending

gas within the limits named, and that, as such, it continued in full life till April 1, 1875, or till its amalgamation with the "CRESCENT CITY GAS LIGHT COMPANY," in March, 1875.

2. The other amalgamating Company was chartered by the Legislature April 20th, 1870. (*Record*, pp. 39, 40, 41.) This charter was amended July 10, 1873. (*Record*, pp. 41, 42.) The charter conferred on this Company the power of "holding, purchasing and conveying any estate, real and "personal, for the use of said corporation." This power was, of course, limited to such property as would be necessary and convenient for the transaction of its business, or the security and collection of debts due it. (*Record*, p. 39.) The charter also provided, "That the Crescent City Gas "Light Company, their successors and assigns, shall have "and be entitled to the sole and exclusive privilege of mak- "ing and vending gas lights in the City of New-Orleans, to "such persons or bodies corporate who may voluntarily "choose to contract for the same, for the term of fifty years "from and after the date of the expiration of the charter "of the New-Orleans Gas Light Company:" in other words, from and after April 1, 1875. (*Record*, p. 41, sec. 8.)

To carry out the above privilege, this company was also "authorized, *after the passage of this Act*, to lay pipes or conduits, at the expense of the company, in any of the streets or alleys of said City of New-Orleans, where the same may be required," &c. (*Record*, p. 41, sec. 9.)

Again, (*Record*, p. 41, sec. 11,) "the Crescent City Gas "Light Company is authorized and empowered to manu- "facture gas from any and all materials suitable for such "purpose, and shall have power to purchase and use any "patent or patents, or the right to the same, for the man- "ufacture of such gas lights."

But that the Legislature, in chartering the CRESCENT CITY COMPANY, intended to clothe it with business faculties which it could exercise at once, is evident from the 9th section of the original Act, already referred to. (*Record*, p. 41.)

That section clearly authorized the Company to lay its

pipes and conduits in the streets of New-Orleans as soon after the passage of the Act as it might choose.

The necessity of this power in the Company, and of its exercise in some form before April 1st, 1875, was obvious, for on the latter date the charter of the old Company was to expire, and its right to transact business cease. It was therefore important that the equipment of the CRESCENT CITY COMPANY should be complete, and that, under some arrangement, it should have gas ready made for distribution before the extinction of the old Company. If it could not obtain the plant and gas on hand of the old Company, it could construct and lay the one and manufacture the other, before April 1, 1875.

These powers were indispensable to the independence of the CRESCENT CITY COMPANY, and to enable it to meet the emergency that might occur. It was, therefore, endowed with full powers to act as a business and manufacturing company at any time after it should be organized when it should deem necessary or proper.

The CRESCENT CITY GAS LIGHT COMPANY, thus endowed, was immediately organized and established, and soon after asserted its existence and its rights in the Courts of Louisiana. Its corporate existence and powers were fully recognized in a suit commenced in 1874, and which was finally decided by the Supreme Court of the State, nearly two months before the consolidation. (*Crescent City Gas Light Company vs. New-Orleans Gas Light Company*, 27 *La. Ann. Rep.* 138.)

We have, then, two "business and manufacturing corporations or companies," whose objects and business are, in general, of the same nature; one of which was chartered in 1835, and the other in 1870, and therefore both existing prior to and at the time the following Act was passed by the Legislature of the State:

"AN ACT *to authorize the consolidation of business or manufacturing corporations or companies.*

"SECTION 1. *Be it enacted by the Senate and House of* "*Representatives of the State of Louisiana, in general*

"*assembly convened*, That any two business and manu-
"facturing corporations or companies now existing under
"general or special law, whose objects and business are
"in general of the same nature, may amalgamate, unite
"and consolidate said corporations or companies, and form
"one consolidated company, holding and enjoying all the
"rights, privileges, powers, franchises and property be-
"longing to each, and under such corporate name as they
"may adopt or agree upon. Such consolidation shall be
"made by agreement in writing, by or under the authority
"of the board of directors, and the assent of the owners of
"at least three-fifths of the capital stock of each of said
"corporations or companies; and a certificate of the fact of
"such consolidation, with the name of the consolidated
"company, shall be filed and recorded in the office of the
"Secretary of State: Provided, No such consolidation shall,
"in any manner, affect or impair the right of any creditors
"of either of said companies. In the agreement of con-
"solidation the number of directors of the consolidated
"company shall be specified, and the capital stock may
"be any amount agreed upon by the companies or corpora-
"tions, and set forth in the articles of consolidation.

"SECTION 2. *Be it further enacted, etc.*, That all laws or
"parts of laws conflicting in any manner with the provisions
"of this Act be, and the same are hereby repealed, and that
"this Act shall take effect from and after its passage."

In this state of things these two companies exercised the plain right conferred by this statute, and thereby "amalgamated, united and consolidated" themselves, and thereupon "formed one consolidated company, holding and enjoying all the rights, privileges, powers, franchises and property belonging to each," and agreed on and adopted the name of the "NEW-ORLEANS GAS LIGHT COMPANY," that of the present appellant.

I have stated this fact without reservation or qualification advisedly, for no question has been raised as to the form or detail of the acts of the two companies resulting in their amalgamation; nor any suggestion that they failed in any particular to comply with the provisions of the Act, either

in spirit or letter. I refer here more especially to the questions raised by the demurrer, for it was on these that this point in the judgment below was based.

Besides, the Supreme Court of Louisiana has decided that in this amalgamation, "All the requirements of the Act were fully complied with." (*Feevs. New-Orleans Gas Light Co.*, 35 *La. Ann.* p. 413.)

This is conclusive *Lucas v R R Co. 23 Wall 108*
Gossip v Carnegie 80 U.S. 441

And here it is appropriate to state the questions raised by the demurrer. Three causes of demurrer are assigned. (*Record*, pp. 53, 54.)

"1. That it appears by the bill that the charter of the "New-Orleans Gas Light Company expired on the 1st of "April, 1875, * * * * and, as adjudged by the Su- "preme Court of the State, never was extended beyond that "date; that the Act of the Legislature of Louisiana of "the 12th December, 1874, providing for the amalgamation "of business or manufacturing corporations, does not au- "thorize the union of two corporations beyond the limit of "the charter of one of the corporations entering into such "union, so as to give to either a chartered life under a new "name beyond the end of its corporate existence as declared "in the charter; hence, if any amalgamation was ever com- "pleted between the New-Orleans Gas Light Company and "the Crescent City Gas Light Company under said Act of "1874, it ceased to have effect, and the amalgamated bodies "lost their corporate capacity derived from said amalgama- "tion on the 1st April, 1875." (*Record*, p. 53.)

"2. That if any monopoly to make and vend gas ever "existed in favor of the complainant, or of either of the said "corporations alleged to have been amalgamated, then said "exclusive privilege has been *withdrawn* and *revoked* by "the Constitutional Convention of the State, as declared in "Article 258 of the Constitution of the State, which de- "clares, that 'all rights, actions, prosecutions, claims and "*contracts*, as well of individuals as of bodies corporate, and "all laws in force at the time of the adoption of this Con- "stitution, and not inconsistent therewith, shall continue as "if the said Constitution had not been adopted. But the

"monopoly features in the charter of any corporation now "existing in the State, save such as may be contained in the "charter of railroad companies, are hereby abolished.'

"And these defendants aver and maintain, that said pro- "vision in the Constitution was and is competent legislation, "and deprives complainant of any basis to assert the exclu- "sive privilege to make and vend gas set up in its bill, even "if such exclusive privilege had existed before the adop- "tion of said Constitution." (*Record*, p. 53.)

"3. That even if said companies had amalgamated under "said Act of 1874, no exclusive privilege would pass to the "consolidated body, even if said exclusive privilege pre- "viously existed in favor of either." (*Record*, p. 54.)

POINTS.

I.

This brief statement, in the light of the pleadings and of the opinion of the Court below, suggests four questions for discussion here:

1. Were the two amalgamated corporations both embraced within the scope of the Act of December 12th, 1874?

2. If so, did their consolidation under the Act confer on the new and single corporation "all the rights, privileges, "powers, franchises and property belonging to each?"

3. Did the eighth clause of the charter of the Crescent City Gas Light Company, granting to it the exclusive privilege of making and vending gas lights in the City of New-Orleans for fifty years, constitute a valid contract between the State and that corporation?

4. Did the new constitution of Louisiana, adopted in 1879, abrogate or destroy any of those "rights, privileges, powers, franchises or property," which had passed to and merged in the consolidated company, the present appellant, and especially the exclusive privilege of making and vending gas lights within the limit prescribed?

We will consider under this first point the first question above stated: "Were these two amalgamated corporations embraced within the scope of the Act of December 12, 1874?" This is not an obscure, metaphysical question, requiring any obscure or metaphysical considerations for its solution. On the contrary, it is a very plain question, to be answered in the light of the Act itself, and the character of those two corporations. They were, by the provisions of their charters, both "business and manufacturing corporations or companies." The Legislature had conferred on both the power to make and vend illuminating gas. Both the making and selling gas necessarily involved business transactions on a large scale and the outlay of large capital. Both were acknowledged corporations, contesting their respective rights in the Courts of the State, when this amalgamating Act was passed. It is true that the CRESCENT CITY COMPANY was not authorized by its charter to commence the *sale* of gas within the territory occupied by the older Company till after April 1, 1875. This specific power was to lie dormant till that time should arrive. All its other corporate powers sprung into activity immediately on its organization, whereby it accepted its charter. The whole Act is carefully worded so as to not only create the corporation, but to endow it at once with all business faculties and powers necessary to enable it to be ready to enter upon the sale and distribution of gas on April 1, 1875, in every part of the City, when the corporate existence of the other Company was to terminate. It could lay its pipes throughout the City, purchase all necessary real and personal property, including patented rights to inventions. It could build gas works and machinery. In short, at any time after its organization, it could do any and every act for which it was chartered, except to sell gas within certain prescribed limits, the right to do which was not to be complete till April 1, 1875. It could even manufacture gas and store it in large meters or reservoirs, ready for distribution the moment the given day arrived. In the meantime it could sell gas in those parts of the City not covered by the monopoly of the old Company.

That it had business and manufacturing rights or powers, and was, therefore, a business and manufacturing corpora-

tion, would seem to be too palpably obvious to require argument. The unambiguous language of its charter gives its real corporate character. If it was not a business and manufacturing company, pray to what class of corporations did it belong?

There seems to be no question raised as to the character of the original New-Orleans Gas Company; yet the two Companies were almost identical, the only essential difference being that one could not *exercise* the right to *sell* gas within certain limits till the exclusive right of the other in the premises should terminate. Clearly, their business was, in the language of the consolidation Act, "in general, of the same nature."

There would, therefore, seem to be no doubt whatever that they came within the purview of the Act, and that their amalgamation under it was entirely lawful, and created the new corporation—the "NEW-ORLEANS GAS LIGHT COMPANY," the present plaintiff. As heretofore stated, the fact that the new company adopted the name by which one of the old companies had been known, is an immaterial circumstance. The Act explicitly authorized the new company to take whatever name might be agreed upon by the terms of the consolidation. It is quite superfluous to add, that the statute nowhere, in any way, express or implied, discriminates between business and manufacturing companies, whereby it excludes from the privilege of the Act those whose charters are of a longer or shorter duration, or which have rights that may expire within a given time, or on a given contingency. It leaves all such questions to the operation of law, as applied to the terms of the charters.

II.

Assuming that those Companies had the right to, and did consolidate, and thus became one corporation under the Act in question, did such consolidation confer on and carry to the new Company "all the rights, privileges, powers, franchises and property belonging to each" of the old ones?

It would seem that this question is answered, when it is merely stated in the light of the consolidating statute.

In accordance with reason and universal practice it expressly merges in the new corporation all which the old ones had, which are not inconsistent with each other. The very terms, "amalgamate," "unite," "consolidate," imply a union, or putting together of two entire things. It is not the selection of a part of each and the union of those selected parts that is aimed at by such Legislature. It is not a transfusion of corporate blood from one into the other, but the blending into one new corporate entity two corporate bodies, the new entity or organization absorbing every right, faculty, power and attribute which belonged to each of the two. For that reason it is said that on the legal consolidation of two companies the latter, as individuals, disappear and become extinct, while a new one emerges into existence clothed with the rights and functions of both.

It is quite true that whether the two prior companies became extinct on their amalgamation, depends on the construction of the Act authorizing the union.

Central R. R. Co. vs. Georgia, 92 *U. S.* 655.

But we submit that the proper construction of the statute in this case warrants the conclusion that the old companies disappeared when the consolidation was perfected. (*Fee vs. The New-Orleans Gas Light Co.*, 35 *La. Ann.* p. 413.) This, however, may not be very material in this case.

Nothing material is lost by the process of amalgamation. Nothing in substance is gained by it. The *forms* merely of the two old companies perish, while their essential attributes—their substance—unite and merge in another form or body.

From this fundamental fact it follows, in legitimate and irresistible sequence, that when the original New-Orleans Gas Light Company and the Crescent City Gas Light Company amalgamated under the Act of December 12, 1874, and thus formed a new corporation, under the name of the "NEW-

ORLEANS GAS LIGHT COMPANY," the chartered rights and privileges of the latter were the sum of the chartered rights and privileges of the two former, no less, no more. If, therefore, one of the old companies had the exclusive right to manufacture and sell gas for one given period, and the other had the exclusive right for another given period, the new company took the exclusive right for both periods. The fact that one period covered by this exclusive right was about to expire, and the other not to begin till the former should expire, in no way impaired the power to consolidate. The act of consolidation neither adds to nor impairs the exclusive rights which existed in the old companies. It simply translated them to a new company.

No one is injured by the amalgamation. No rule of public policy is infringed. In fact, for all *practical* purposes, the consolidation of these two gas companies is the same as if the CRESCENT CITY COMPANY had *purchased* the plant of the original NEW-ORLEANS COMPANY. While the act of merger did not prolong the existence of any corporate powers of the NEW-ORLEANS COMPANY, it did not abridge the existence of any of the corporate powers of the CRESCENT CITY COMPANY.

We therefore respectfully submit that the assumption in the first cause of demurrer, that by the amalgamation of these two corporations, the charter of one having but a short time to run, the *new company* became extinct at the period when the shortest lived one would have ended if no consolidation had taken place, is a pure assumption and nothing else. It rests on no solid foundation of law or logic, nor, so far as we can discover, has it any plausible ground of support. Nothing in the Act authorizing the amalgamation, or in the rules of construction applicable to such statutes, or to the transactions under them, warrants any such assumption.

Of course it is quite a different thing to say that the particular powers belonging to the shortest lived company terminated at precisely the same period which they would have ended had no consolidation taken place.

If, therefore, the two corporations were within the scope

of the Act of 1874, "the sole and exclusive privilege of making and vending gas lights in the City of New-Orleans * * * * for the term of fifty years" from April 1, 1875, is now vested in the present appellant, unless the grant of this privilege has been legally taken away.

III.

Did the eighth clause of the charter of the CRESCENT CITY GAS LIGHT COMPANY, granting to it the exclusive privilege of making and vending gas lights in the City of New-Orleans for fifty years, constitute a valid contract between the State and that corporation?

This question can be answered unhesitatingly in the affirmative, so far as the mere right, apart from its exclusiveness, to make and sell gas is concerned. Such charters of private corporations, when accepted and acted on by the corporators, become contracts, and if the State granting them has, neither in the charters themselves, nor in its general laws in force at the time the charters were granted and accepted, reserved the right of alteration or repeal, they are irrepealable contracts, the obligation of which the State cannot impair.

A long line of decisions, commencing with that in the Dartmouth College case, and coming down to the present time, have established the law on this point. The subject is too familiar to this Court to require a general citation of authorities.

In the case of the *Delaware Railroad Tax*, (18 *Wall.* 206,) it was said, (p. 255,) "That the charter of a private corporation is a contract between the State and the corporators, and, within the provision of the constitution prohibiting legislation impairing the obligation of contracts, has been the settled law of this Court since the decision in the Dartmouth College case. Nor does it make any difference that the uses of the corporation are public, if the corporation itself be private. The contract is equally protected from legislative interference, whether the public be interested in the exercise of its franchise, or the charter be granted for the sole benefit of its corporators."

IV.

But the privilege of making and vending gas which, by the amalgamation, passed to the present appellant, is, by the terms of the grant to the CRESCENT CITY COMPANY, made *exclusive* for fifty years from April 1, 1875. Was this contract, conferring on that Company the exclusive privilege, both valid and irrepealable by the State or people? This, of course, is a vital question in this case, for it is to prevent the invasion of that exclusive right that this suit was brought and is prosecuted.

At the outset it will doubtless be conceded that the clause in the Federal Constitution, protecting contracts from being impaired by law, applies to *organic* law as well as to merely statutory enactments. This seems to have been too firmly settled to require argument.

Railroad Company vs. McClure, 10 *Wall.* 511.
White vs. Hart, 13 *Wall.* 646.
Gunn vs. Barry, 15 *Wall.* 610.

Now, by recent decisions of this Court, the question whether an exclusive franchise granted to a corporation is a contract on which the 10th section of the first article of the constitution lays its spell, and is therefore irrepealable, depends on the character of the corporation and the business to which its charter and the exclusive privilege relate. I refer, now, especially to the last case on this point.

Butcher's Union Co. v. *Crescent City Co.* 111 *U. S.* 746.

In that case the power of the Legislature to make an irrepealable contract, relating to subjects affecting public health and morals, was denied. It was held that all such matters lay within the domain of the police power, a domain, the control of which the Legislature had no right to and could not part with, at least so far as matters relating to public health or morals are concerned. That, in other words, no irrepealable *exclusive* privilege or franchise could be granted to operate or take root within that domain.

It was also stated, with great vigor and emphasis, in the two concurring opinions, that no monopoly whatever could be granted over ordinary business or employment.

Under the doctrine of the case referred to, (and which we do not question,) two classes of business are, at all times, exempt from control by any monopoly, even though an enactment of the Legislature should attempt to make the monopoly irrepealable. One class relates to and covers the comparatively limited range occupied by transactions which may essentially affect public health or morals, or other analogous matters, if there be any within the scope of the police powers. The other class relates to and covers the vast field of ordinary business, trades, employments and occupations which form the great mass of the pursuits of life.

But, clearly, there is another field, wider, perhaps, than the first, and much narrower than the second; over which the Legislature has such control that it can grant, and always, or, at least, *often* has granted exclusive privileges, which come under the protection of the article of the Federal Constitution already referred to, as being valid contracts, which the State is without power to impair.

Mr. Justice BRADLEY, in his concurring opinion in the case last cited, (p. 763,) refers to this class of cases, and says:

"I do not mean to say that there are no exclusive rights "which can be granted, or that there are not many regu- "lative restraints on civil action which may be imposed by "law. There are such."

* * * * * * *

"So, an exclusive right to use franchises, which could "not be exercised without legislative grant, may be given; "such as that of constructing and operating public works, "railroads, ferries," &c.

Jersey City Gas Co. v. Dwight 29 N.J. Eq. 248
Newark — Long on Gas Water - p. 16

We now submit, that Gas Companies come within the class that the Legislature may clothe with exclusive privileges, the grant of which become irrepealable contracts. The franchises of such companies could not be obtained or

exercised without the aid of legislative grant. They could not exist, except by the *fiat* of the Legislature. Such companies could not enter upon the streets of a City, lay their mains and service pipes for the distribution of gas to the people, without permission from the Legislature of the State or City, (whichever had the power.) In other words, it would be impossible for any individual or corporation to vend illuminating gas throughout a City without legislative aid. So far from being an ordinary business, it is one entirely unique. It must, in its very nature, often be an exclusive franchise or privilege; for to grant the use of all the streets of a City to any one and every one who might choose to lay gas pipes therein, would open the door to endless intrusions and annoyance, that might render the streets impassable and travel impracticable. Besides, the enterprise always involves a large outlay for a peculiar kind of plant, which can be of little value except in the place where it is put. It can have almost no market value to take up and remove, and its value where it lies may be substantially destroyed by the admission of a competitor in the same field, in the same business. These, with the other considerations mentioned, would seem to entitle a Legislature of a State or City to judge for itself whether the grant of an exclusive privilege to supply gas in a particular district is consistent with public policy. The interests of the public in this case are protected by a maximum price above which the rate cannot be raised. (*Record*, p. 42, sec. 4.)

In the foregoing particulars, gas companies closely resemble water companies, and they are classed together by the text-writers.

Morawetz on Private Corporations, § 498.

Neither has any relation to public morals, nor, probably, in any legal sense to public health, though the character of the water furnished to a community is very important; but security for that is always provided for in the charter or contract with the Company. Failure to supply pure water would be a breach of the contract, for which the charter could be revoked.

Both water and gas companies are under implied obliga-

tions to the public, which they can be compelled to perform by *mandamus* or other appropriate legal remedy.

The People vs. The Manhattan Gas Light Company, 45 *Barb.* 136.

Lumbard vs. Stearns, 4 *Cush.* 60.

N. O. Gas Light Co v Building 12 Robinson (La) 378

The right of eminent domain is exercised in their behalf.

Bloomfield Gas Co. vs. Richardson, 63 *Barbour*, 437.

Though having obligations and duties to the public to perform, gas, water, turnpike, railroad, ferry, bridge and other analogous companies are still private corporations. (*Kent's Com. Vol.* 2, *side page*, 275. *Delaware Railroad Tax*, 18 *Wall.* 206.)

It is common knowledge that such corporations can be endowed by the Legislature with exclusive franchises and privileges which it cannot recall, unless it has reserved the power in the charters themselves, or by prior *previous* general legislation which, *per se*, becomes a reservation in the charters subsequently granted.

Boston and Lowell R. R. Co. vs. Salem and Lowell R. R. Co. 2 *Gray*, 1, 28–32.

This principle applies with peculiar force to gas and water companies, and, we may add, with much greater force than to railroad, bridge, ferry and other companies to which it has been repeatedly applied. An exclusive privilege granted a bridge company *in perpetuity* was held by this Court to be a contract which the Legislature was without power to impair.

The Binghamton Bridge, 3 *Wall.* 51.

It is superfluous to add that the privilege thus held by this Court to be protected by the Federal Constitution was a monopoly. This latter feature alone made the franchise of the Bridge Company valuable.

It is said in our principal brief in the present case, (p. 19,) that some monopoly features in the constitution of a gas company are inherent and indelible. That a monopoly is often, if not always, from necessity, conferred on these companies, is believed to be indisputable. And, so far as a

somewhat diligent search for authorities can show, the monopoly feature has been conceded, or affirmed to be valid.

State vs. The Columbus Gas Light and Coke Company, 34 *Ohio State Rep.* 572.

City of St. Louis vs. St. Louis Gas Light Company, 70 *Mo.* 69.

State v. Ill. Cov. & Ky Gas L. Co 29 Wis. 454
Jersey City Gas Co. v. Dwight 29 N. J. Eq. 248

Finally, we therefore submit:

1. That the original NEW-ORLEANS GAS LIGHT COMPANY and the CRESCENT CITY GAS LIGHT COMPANY were both existing business and manufacturing corporations, whose objects and business were in general of the same nature, within the meaning of the consolidation act of Louisiana, passed March 12, 1874.

2. That they availed themselves of the right to amalgamate, and became one corporation under the name of the NEW-ORLEANS GAS LIGHT COMPANY, the present complainant and appellant.

3. That by virtue of their consolidation all the rights, powers and privileges of each of the old companies passed to the new or consolidated company.

4. That the exclusive privilege of making and vending gas within the limits of the City of New-Orleans, which passed to the new company, constituted a valid and irrepealable contract, the obligation of which no law, organic or statutory, of the State could impair.

5. That the appellant is entitled to the relief and protection prayed for in the bill, and therefore the judgment below should be reversed.

WM. D. SHIPMAN,

Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 208.

THE NEW ORLEANS GAS LIGHT COMPANY,
APPELLANT,

vs.

THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY ET AL.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF ON BEHALF OF DEFENDANT AND APPELLEE.

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Of Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES.

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THE NEW ORLEANS GAS LIGHT COMPANY,
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THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY ET AL.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF ON BEHALF OF DEFENDANT AND APPELLEE.

Complainant claims the exclusive right to make and vend gas lights in the City of New Orleans, for the term of fifty years, from the first of April, 1875. It bases its title to this privilege upon Section 8, of Act No. 97, approved April 20th, 1870, entitled "An Act to incorporate the Crescent City Gas Light Company." The bill avers that complainant became possessed of this exclusive privilege by a consolidation with the Crescent City Gas Light Company, made on the 29th day of March, 1875, under the provisions of a statute passed by the General Assembly of Louisiana, in 1874, and entitled "An Act to authorize the consolidation of business and manufacturing Corporations or Companies."

In 1879 Louisiana adopted a new Constitution, Article 258 of which contains the following provision:

"The monopoly features in the charter of any corporation "now existing in the State, save such as may be contained in

"the charters of railroad companies, are hereby abolished." In 1880, the Legislature passed "An Act to amend and re-enact Sections 683, 684, 689, 692 and 698 of the Revised Statutes, with reference to corporations for works of public improvement," in which it is provided that "It shall be lawful for any number "of persons, not less than six, to form themselves into and con- "stitute a corporation for the following purposes, to-wit: * * "to construct and carry on works to supply cities or towns with "gas or water." See appendix. On the 25th of January, 1881, the Council of the City of New Orleans adopted an ordinance authorizing H. S. Jackson and Watson Van Benthuysen, for the period of fifty years, to lay, at their own expense, any and all necessary mains, pipes, conduits, in and along the streets, alley ways, sidewalks, bridges, avenues, parks and other places in said city, for the purpose of supplying all buildings, erections, and works, when needed with gas. The ordinance further authorized the grantees to transfer and assign this privilege. See Appendix. Jackson and Van Benthuysen accepted the ordinance, organized a corporation in compliance with the requirements of the above Act of the Legislature, under the name and style of "The Louisiana Light and Heat Producing and Manufacturing Company," transferring to it all the rights and privileges granted to the them by the city. *See Appendix.*

The complainant assails Art. 258 of the Louisiana Constitution, the ordinance of the City of New Orleans, and the act of incorporation of the Louisiana Light and Heat Producing and Manufacturing Company, as violative of the exclusive privilege it claims to possess, and as impairing the obligation of the contract contained in its charter.

We shall insist, on behalf of appellee (1), that the alleged monopoly has been recalled by the Constitution of 1879, and (2) that complainant did not acquire, by the act of consolidation, the exclusive privilege conferred upon the Crescent City Gas Light Company by its charter.

The main question to which I shall first direct the attention

of the Court, and the only one necessary to the decision of this case is, *does the Article 258 of the Louisiana Constitution impair any contract of complainant protected by the Constitution of the United States?* This question is not only material, but also jurisdictional; it meets us on the very threshold of the argument, for both complainant and defendants, being citizens of the same State, they cannot litigate their differences in the Federal Courts, save upon the theory that the controversy between them is one arising under the Federal Constitution or laws. The recent decision of this Court in the Butchers' Union Co. vs. Crescent City Co., 111 U. S. 746, is so pointedly applicable to the case in hand that it seems almost a work of supererogation for me to say more, than merely to refer to the opinion delivered in that case. I shall, therefore, assume that if complainant's business comes within the purview of the police power of the State, the exclusive privilege, conferred by Section 8, Act No. 97, of 1870, for fifty years, has been revoked by the Constitution of 1879, and that this revocation does not impair the obligation of any contract protected by the Constitution of the United States. In other words, that it was beyond the power of the legislature, which enacted the Statute of 1870, to grant an irrepealable right to complainant, so as to prevent either the same or any subsequent legislature from modifying or amending the statute conferring the exclusive privilege or from giving like privileges to others. The monopoly granted to the Crescent City Gas Light Company by the act of 1870, entitling it "to the sole and exclusive "privilege of making and vending gas lights in the City of New "Orleans for the term of fifty years," was a mere license or "permit good as against existing laws, but subject to future "legislative and constitutional control or withdrawal." Stone v. Mississippi, 101 U. S. 814. It is therefore only necessary for us to show that, under the jurisprudence and laws of Louisiana, gas companies, as well as slaughter house companies, come strictly within the police power of the State, in order to put an end to complainant's pretensions. The question has been di-

rectly decided in the very case referred to in complainant's bill. Here is the language used by the Supreme Court of Louisiana in deciding the case of the Crescent City Gas Light Co. vs. New Orleans Gas Light Company (27 A. p. 147): "The right to operate "gas works, and to illuminate a city, is not an ancient or usual "occupation of citizens generally. No one has the right to dig "up the streets, and lay down gas pipes, erect lamp posts and "carry on the business of lighting the streets and the houses of "the City of New Orleans without special authority from the "sovereign. It is a franchise belonging to the State, and IN "THE EXERCISE OF THE POLICE POWER THE STATE COULD "CARRY ON THE BUSINESS ITSELF OR SELECT ONE OR SEVERAL "AGENTS TO DO SO." This Court expressed a similar opinion in a case, which came up from Louisiana a few years ago. The City of New Orleans sought to escape liability on certain bonds issued to the Jefferson City Gas Light Company, on the ground that they were issued in aid of a private corporation. Said Mr. Justice Field, in delivering the opinion of the Court, "A "private corporation, as well as individuals, may be employed "by a city in the construction of *works needed for the health, com-* "*fort and convenience of citizens;* and though *such works* may be "used by the corporation for its own gain, yet, as they *advance* "*the public good*, the corporation may be properly aided in their "construction by the city; and for that purpose its obligations "may be issued, unless some constitutional or legislative pro- "vision stands in the way." New Orleans vs. Clark, 95 U. S. 652. There seems to be no doubt that the police power "does "extend to the protection of the lives, health and property of "the citizens, and the preservation of good order and public "morals." Beer Co. vs. Massachusetts, 97 U. S. 28.

Carburetted hydrogen gas, used for illuminating purposes, comes directly within the police power. It affects the public health and comfort of the citizen, contaminates water, fouls the atmosphere, like gun powder is highly explosive, and is necessarily a dangerous agency. Thompson on Negligence § 1, p. 108 et seq.; Municipality No. One vs. Gas Light Co., 5 A. 439.

"The establishment of gas works, construction of sewers "and the like, are matters which pertain to the municipality as "distinguished from the State at large." Dillon on Municipal Corporations § 33.

"The common law holds life and health of the community "to be of far higher importance than commercial profit or even "the diffusion of light. Nothing but the express authority of "the Legislature can justify the transaction of business in a "manner detrimental to the public health." Sherman and Redfield on Negligence, § 336.

"A gas company carries on a business of a public character "and for the public use." Bloomfield & Gaslight Co. vs. Richardson, 63 Barbour, 437.

Noxious smells arising from gas works make them more or less a nuisance. Ottowa Gas Co. vs. Thompson, 39 Ill. 598; Wood's Law of Nuisance, Secs. 495, 530. If the coal used contain a large quantity of sulphur, or the gas is not perfectly purified, it is very injurious to health.

The considerations that have induced the courts to hold that gas companies in Louisiana are included within and subject to the police power of the State, are much more cogent than if the question had arisen in any other portion of the Union, because of the peculiar system of laws prevailing in that Commonwealth. And it is therefore important to constantly bear in mind that we are dealing with a Louisiana corporation, deriving whatever powers it may possess from a Louisiana legislative enactment, chartered under the laws of that State, and holding its franchises and property subject to the principles enunciated in the Civil Code and Revised Statutes of Louisiana. While at the common law the *fee* in the streets is vested in the abutting proprietors (§ 524, Dillon on Municipal Corporations; 99 U. S. 635), who own up to the centre, the public only enjoying an easement or servitude of passage over them—in Louisiana and by the Civil law the *fee* or absolute ownership of streets "belongs in common to the inhabitants of cities" (Rev. C. C. Art.

458, 454; Dillon on Municipal Corporations, § 514), and the municipal authorities alone have the administration and control over them, independently of the abutting proprietors. Rev. C. C., Arts. 429, 431, 484. Hence, while at the Common law the State must give permission for the use of streets, or the right of way therein, to corporations; in Louisiana "the city has the "power to sell the right of way in the streets to individuals or "corporations."

Brown vs. Duplessis, 14 A. 482.

Tilton vs. Railroad Company, 35 A. 1062.

Water Works Company vs. Sugar Refinery, 35 A. 1111.

In all of the charters of the City of New Orleans, from the earliest to the latest, the lighting of the city is made a police function. Thus, the charter of 1805 provided that "the Mayor and "City Council shall have power to raise by tax, in such manner "as to them may seem proper, upon the real and personal "estate within the said city, such sum or sums of money as "may be necessary to supply any deficiency for the *lighting*, "cleaning, paving and watering the streets of the said city, for "supporting the city watch, the levee of the river, the prisons, "work houses and other public buildings, and for such other "purposes as *the police* and good government of the said city "may require"—(Sec. 6 of "Act to incorporate the City of New Orleans," Orleans Laws, 1804 and 1805, pp. 54 and 56). The charter of 1870 authorized the Council "To regulate and "make improvements to the streets, public squares, wharves "and other public property, and to *provide for the lighting* and "watering the same" (Sec. 12 of Act No. 7, Extra Session of 1870, Acts of Louisiana, 1870, p. 35), and the Charter of 1882, (Sec. 7, p. 20, Acts 1882), also empowers the Council "*to light the streets*, wharves, landings and public squares."

The three great elements absolutely essential to the health, happiness and comfort of the citizen, the peace, security and well-being of society, in all densely populated centres, are pure air, pure water and an abundance of light. These the

municipal government is under an obligation to provide to the city's inhabitants, and even to "the stranger within her gates." Artificial lights in cities are essential agencies for the preservation of order, the protection of persons and property, the detection and arrest of culprits and the prevention of crime. Regular and extensive lighting of streets in the dark hours of night is a potent aid to the municipal police. The efficiency of the police department in all large cities is materially strengthened and improved by brilliant and extensive lights. Statistics show that three times as many crimes are committed in the night than in the day time. Assassinations, murders, rapes, robberies, thefts, arsons, burglaries, those awful crimes which disgrace the human race, are all peculiarly crimes of secrecy and darkness. In New Orleans, especially from the first foundation of the city down the present time, the lighting of the streets has been considered an important factor in its nocturnal police. The historian of Louisiana tells us that under the Spanish domination, as far back as 1792, "In one of the first communications to the Cabildo, the "Baron Carondelet, then intendant of the province, recom- "mended to them to make provision for lighting the city and "employing watchmen. The revenue of the corporation did "not amount, at this period, to seven thousand dollars. To "meet the charges for the purchase of lamps and oil, and the "wages of watchmen, a tax of one dollar and twelve and a half "cents was laid on every chimney." Martin's History of Louisiana, Chapter XXI., p. 257. And afterwards, "The Baron "urged the necessity of continuing to light the city, and retaining "the watchmen, on the ground of the city being full of French "people, the nocturnal assemblages of whom, as well as that of "the slaves, it was prudent to prevent." Id. p. 269. It was in this same year that the famous Scotchman, Robert Murdoch, then residing at Redruth, in Cornwall, commenced his investigations into the properties of gases emitted by various substances, which finally resulted in the adoption of coal gas as the chief artificial illuminating agent throughout all the great cities of the civilized world.

If the manufacture and sale of illuminating gas in the City of New Orleans comes within the police power, if the grant of the exclusive privilege was made under that power, as the Supreme Court of Louisiana has determined, it is clear that such grant is a mere license, subject to revocation, and consequently of abridgement at the will of the grantor. For the police power and the matters included within its scope cannot form the subject of a contract. It is a power concerning which no irrevocable contract can be made. A mere license, and nothing more, subject to modification, change or withdrawal at any time, is the only bargain the State can enter into with reference to matters embraced within its police power. Hence, we conclude, on this branch of the argument, that complainant having no contract to impair, but only a mere permit or license, the Circuit Court had no jurisdiction, and defendant's demurrer must, therefore, be sustained, and the bill dismissed.

II.

The exclusive privilege conferred upon the Crescent City Gas Light Company, by the special charter contained in the Statute No. 97, of 1870, was not transferred to the complainant by the act of consolidation referred to in the bill. The monopoly claimed had, in contemplation of law, ceased to exist before the adoption of the Constitution of 1879. It had been voluntarily surrendered and abadoned by the very fact of consolidation. The grantee of this exceptional privilege must be deemed to have renounced it when the contract of amalgamation was entered into with the New Orleans Gas Light Company. In investigating this question we should bear in mind the following rules of construction, relative to the interpretation of statutes or charters conferring exclusive rights or privileges; in other words, creating a monopoly.

"Generally, all words in a charter in restraint of trade are "looked upon with disfavor, and if doubtful, that meaning will "be taken, which is least inimical to commerce." Grant on Corporations (* 34) p. 47.

"Exclusive rights to public franchises are not favored. If "granted, they will be protected, but they will never be pre- "sumed. Every statute which takes away from the Legislature "its power, will always be construed most strongly in favor of "the State. These are elementary principles." Wright vs. Nagle, 101 U. S. 796.

"The rule of construction in this class of cases is that it "shall be most strongly against the corporation. Every reason- "able doubt is to be resolved adversely. Nothing is to be "taken as conceded, but what is given in unmistakable terms, "or by implication equally clear. The affirmative must be "shown. Silence is negation, and doubt is fatal to the claim. "This doctrine is vital to the public welfare. It is axiomatic in "the jurisprudence of this Court." Fertilizing Company vs. Hyde Park, 97 U. S. 666.

"Although we have no direct constitutional provision "against a monopoly, yet the whole theory of a free government "is opposed to such grants, and it does not require even the aid "which may be derived from the bill of rights, the first section "of which delares 'that no man or set of men are entitled to ex- "clusive public emoluments or privileges from the community' "to render them void." Norwich Gas Light Co. vs. Norwich City Gas Light Co., 25 Conn. 19.

"It must be found on the statute book in express terms, or "arise from the terms of the statute by implication so direct "and necessary as to render it equally clear." State ex rel. vs. Cincinnati Gas Light & Coke Co., 18 Ohio St. 292.

"The theory of all free governments, whether under a "written constitution or not, is equal rights, equal privileges, "and equal capacities to every citizen in the acquisition of "property and in the preservation of life, liberty and property. "This legislation, granting the exclusive privilege, violates that "spirit as well as the letter of the Constitution, and the con- "struction contended for by appellee, where carried to its "logical and legitimate result, would cause incalculable harm."

(Citizens' Gas Light Co. vs. Louisville Gas Co., Ky. Court of Appeals, 1883); Am. and Eng. Corporation Cases, Vol. 1, p. 156.

Text writers and courts, in applying these rules of interpretation to the construction of statutes authorizing the consolidation of companies, invariably hold that the exclusive privileges and peculiar franchises belonging to one of the consolidating bodies do not necessarily pass to the new corporation. "*But* rights such as *a* franchise or *special privilege will not*, in all "cases, *be possessed by the consolidated body*, as by one of the "original bodies. This would, in some cases, be extending the "privilege, not merely transferring it." Green's Brice's Ultra Vires, p. 545.

"When the act provided that the new body was to 'have "'the' powers, privileges and immunities possessed by each of "'the corporations' united in it, and these had somewhat "different powers, etc., the provision was construed so as to "give the new body those only which each of the previous cor"porations possessed." Boone on The Law of Corporations, § 189.

"But it is evident that the franchises that would pass to the new company would be only such as would be necessary for the exercise of the powers and privileges conferred upon it by the new organization." Field on Corporations, Sec. 434.

The Louisiana statute authorizing the consolidation of corporations says nothing whatever about any of the *exclusive* rights and privileges of the original companies being transferred to or retained by the consolidated company. On this subject it is as silent as the grave. It merely provides that the consolidated company shall hold and enjoy "all the rights, privileges, "powers, franchises and property belonging to each." It is to this act, and not merely to the charter of the Crescent City Company, that we must look in order to ascertain the nature, extent and character of the rights possessed by the consolidated company. In doing so we should remember (1) that exclusive rights and

monopoly privileges are not to be presumed, and (2) that the consolidated company only inherits from its ancestors such franchises as are necessary for the exercise of the powers and privileges conferred upon it by the new organization. It is vain to pretend that the possession and retention of the monopoly asserted in the bill are essential to complainant's corporate existence. It can continue to manufacture and vend gas, *ad nauseam*, shorn entirely of the exclusive privilege claimed in this suit.

Exemptions from taxation, exclusive privileges, monopoly rights contained in the charter of a corporation, do not pass to its successor, or to a company created by consolidation out of previously existing companies, even though one of them originally possessed such extraordinary prerogatives, immunities and powers. Such is undoubtedly the principle enunciated by this Court and adhered to in numerous cases. Shields vs. Ohio, 95 U. S. 319.

Railroad Cos. vs. Gaines, 97 U. S. 348.

Railroad Co. vs. Georgia, 98 U. S. 359.

Hoge vs. Railroad Co., 99 U. S. 348.

Railroad Co. vs. Maine, 96 U. S. 509.

Upon its exclusive privilege complainant must stand or fall; for it is *solely* upon the theory that it has the exclusive right to make and vend gas in the City of New Orleans, that the bill was evidently framed. If the monopoly conferred upon the Crescent City Gas Light Company has been destroyed, either by the act of consolidation or by the Constitution of the State, the defendant's demurrer must be sustained. Other issues have been raised in the pleas filed by defendant in the court below, which we deem it unnecessary to discuss.

Respectfully submitted,

E. HOWARD McCALEB,

Of Counsel for Appellee.

APPENDIX.

No. 125.] AN ACT

To amend and re-enact sections 683, 684, 689, 692 and 698 of the Revised Statutes, with reference to corporations for works of public improvement.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That section six hundred and eighty-three of the Revised Statutes of Louisiana be amended and re-enacted so as to read as follows: "It shall be lawful for any number of persons, not less than six, on compliance with the provisions following, to form themselves into, and constitute a corporation for the following purposes, to-wit: For the construction, working and maintenance of railroads, canals, plank roads, bridges, ferries and other works of public improvement, whether within or without the limits of this State; to effect fire, marine, river and life insurance; to carry on manufactories of cotton, woolen, linen, silk and hempen cloths and cordage; to construct and carry on works to supply cities or towns with gas or water; to compress cotton; to construct and carry on iron, brass and copper foundries; to construct and maintain dry docks or floating docks for the building or repairing of ships and other vessels; to manufacture iron, copper, lead or other metals, earthenware or stoneware, engines, cotton gins, machinery, paper, gunpowder, agricultural implements; to establish companies for refining sugar, and for sea navigation by steam; to create lines of telegraph, and to establish chemical laboratories and manufactures of all kinds; to open and work mines; to construct and maintain docks, steamships and other vehicles for the transportation of freight and passengers; for constructing and maintaining works of drainage, sewerage and land reclamation; and for the development of the agricultural resources of the State, and for the promotion of immigration, and generally all works of public utility and advantage. No such corporation shall engage in mercantile or in commission, brokerage, stock jobbing, exchange or banking business of any kind."

SEC. 2. *Be it further enacted, etc.*, That section six hundred and eighty-four of said Revised Statutes be amended and re-enacted so as to read as follows: "Said corporations shall have power and authority, first, to have and enjoy succession by their corporate name for the period expressed in their act of incorporation, not exceeding ninety-nine years; second, to contract, sue and be sued, in their corporate name; third, to make and to use a corporate seal; fourth, to hold, receive, purchase and convey, under their corporate name, property, both real and personal; fifth, to name and to appoint such managers, directors and officers as their interest and convenience may require; sixth, to make and establish such by-laws for the proper management and regulation of the affairs of the corporation as may be necessary and proper; and any corporation established for drainage, sewerage and land reclamation may, by contract with the owner of real property, duly recorded, have a privilege on said property for the price and value of the work done and facilities furnished."

SEC. 3. *Be it further enacted, etc.*, That section six hundred and eighty-nine of said Revised Statutes be amended and re-enacted so as to read as follows: "No railroad, plank road, canal or works of drain-

age, sewerage and land reclamation shall be constructed through the streets of any incorporated city or town, without the consent of the municipal council thereof; and such council giving such consent to any corporation formed for the purpose of drainage, sewerage and land reclamation may, in the interest of public health and cleanliness, pass all needful ordinances and police regulations to make effective the plan of sewerage and drainage it may so adopt, with reference to all houses and lands within the municipal limits."

SEC. 4. *Be it further enacted, etc.*, That section six hundred and ninety-two of said Revised Statutes be amended and re-enacted so as to read as follows: "Any railroad, plank road, turnpike or canal company and any company for drainage, sewerage and land reclamation, established under the laws of this State, may borrow from time to time such sums of money as may be required for construction, repairs or acquisition of property or franchises, and for this purpose may issue bonds or other obligations, secured by mortgage upon the franchises and all the property, real and personal, of said companies, and payable at such times and places as the board of directors may designate, with power to sell, pledge or otherwise dispose of said bonds on such terms as the said board of directors may deem expedient; *provided*, that nothing contained in this section shall be construed as repealing or in any manner interfering with or impairing act No. 13 of the session of the General Assembly of 1880, approved February 28, 1880."

SEC. 5. *Be it further enacted, etc.*, That section six hundred and ninety-eight of said Revised Statutes be amended and re-enacted so as to read as follows: "Whenever any corporation constituted under the laws of this state, for the construction of a railroad, plank road, turnpike road, or a canal for navigation, or for the purpose of transmitting intelligence by magnetic telegraph or telephone, or for drainage, sewerage or land reclamation, cannot agree with the owner of any land which may be wanted for its purchase, or for the acquisition of any necessary right thereon, it shall be lawful for such corporation to apply by petition to the judge of the district court in which such land may be situated, or if it extends into two districts, to the judge of the district in which the owner thereof resides; and if the owner does not reside in either district, then to the judge of either district, describing the lands necessary for their purposes, with a plan of the same, and a statement of the improvements thereon, if any, and the name of the owner thereof, if known and present in the State, with a prayer that the land, or the right required thereon, be adjudged to such corporation upon the payment to the owner of all such damages as he may sustain in consequence of the expropriation of his land, or some right thereon, for such public work. All claims for land or damages to the owner, caused by its expropriation for the construction of any public works, shall be barred by two years' prescription, which shall commence to run from the date at which the land was actually occupied and used for the construction of the works."

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) S. D. McENERY,
Lieutenant Governor and President of the Senate.

Approved April 10, 1880.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

A true copy:

WILL. A. STRONG,
Secretary of State.

ORDINANCE, CITY OF NEW ORLEANS.

ART. 1. That H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns shall be and are hereby authorized, for the period of fifty years, to lay, at their own expense, any and all necessary mains, pipes and conduits in and along the streets, alleyways, sidewalks, bridges, avenues, parks, gardens, and other places within the limits of the City of New Orleans, for the purpose of supplying all buildings, erections, etc., when needed, with gas, and are to that end authorized to enter upon any and all said places, and to break at their own expense, the surface, and make the necessary excavations theron, when the same may be required for the aforesaid purposes, in such manner as to produce the least possible inconvenience to the city, its inhabitants or the traveling public, on the following terms and conditions, to-wit:

ART. 2. (1.) That the aforesaid H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall repair at their own expense, and under the superintendence of the Administrator of Improvements for the City of New Orleans, any and all places entered upon and broken by them for the purpose herein mentioned, and shall reinstate said places in as good condition as when entered upon by them.

ART. 3. (2.) That if said H. S. Jackson and W. Van Benthuysen, their sucesssors, transferees and assigns, shall fail to repair said streets, parks, gardens, bridges, alleyways, avenues, and other places so entered upon and broken by them within a reasonable period of time, and after a written notice to that effect from the Administrator of Improvements as to the particular place to be repaired, they shall be liable to a penalty of twenty-five dollars per day for each and every day elapsing between such notification above given and the completion of each set of repairs required by each notification, and each twenty-five dollars per day for each separate repair to be made is hereby accepted by said parties as a penalty in the nature of liquidated damages, to be recovered by the City of New Orleans before any court of competent jurisdiction. In case work is not commenced after five days' notice the Administrator of Improvements shall perform the work at their expense.

ART. 4. (3.) That said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall not charge, and hereby bind themselves not to charge the city or any of the inhabitants thereof, for illuminating gas manufactured and sold by them a price greater than two dollars and fifty cents ($2 50) per 1000 cubic feet, with ten per cent. off to private consumers if paid within ten days after monthly bill rendered, to insure prompt payment; that the quality of the gas to be manufactured and sold by them shall not be less than twenty candle power of good commercial character, and as free from deleterious compounds as the nature of the manufacture will permit, and at no time less than twenty candle power, and that said parties shall never, except as hereinafter permitted, make any sale or transfer to, or combination with any other gas company or individual, nor shall they make any arrangement or combination, whereby the privileges in this ordinance contained are rendered inoperative in whole or in part, or by virtue of which they shall agree not to lay mains in certain portions of the city, or by virtue of which any agreement is made with reference to fixing the price of gas to be sold to consumers.

ART. 5. (4.) That in case said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall sell or dispose of the rights and privileges granted by this ordinance, except to a corporation organized for the purposes herein expressed, and of which said H. S. Jackson, W. Van Benthuysen, their successors, transferees and assigns shall be incorporators, or if they fail to comply with the provi-

sions of this ordinance within twelve months after any litigation that may occur, including the termination of appeals, if any, and within six months in case of no litigation, then this ordinance shall be *ipso facto* null and void, and the franchise annulled and revoked.

ART. 6. (5.) That said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns shall, at their own expense, make all connections between the mains, shall furnish all meters, and shall conduct the gas through the streets whenever mains shall be laid to the meters in use in the houses of the consumers of it.

ART. 7. (6.) That said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall supply, if required, the gas to the street lamps, public buildings and offices of the city corporation on the line of such mains at the rate of not more than one dollar and fifty cents per one thousand cubic feet.

ART. 8. (7.) That all rights and claims conferred upon said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall be subject to all police ordinances (not violating the contract and vested rights and provisions of this ordinance) that may hereafter be passed by the Council of the city of New Orleans with regard to the same.

ART. 9. (8.) That said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns shall, within ninety days after the passage of this ordinance, file with the Mayor of the City of New Orleans a written acceptance of its provisions, and a failure to comply with this provision shall be considered as an abandonment and waiver of their right under this ordinance.

ART. 10. (9.) That said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall begin, within six months from the time of filing with the Mayor of the City of New Orleans their written acceptance of the provisions of this ordinance, to provide their buildings, put up their machinery, and lay their mains, pipes and conduits, in good faith; it being provided, however, that should the said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, be prevented, by reason of litigation, from complying with the conditions herein imposed, the time for the beginning of providing buildings, etc., as above provided, shall be extended to six months after the termination of said litigation, including appeals, if any.

ART. 11. (10.) That the rights and privileges herein conferred shall not in any manner render the City of New Orleans liable to any other Gas Company to whom franchises may have been granted by legislative enactments, and that the said grantees accept the privileges herein given, with the understanding that the City of New Orleans is not to be made a party to any legal action which may be brought by any individual or corporation against said grantees.

Nothing in this ordinance, or in the grant to lay mains, pipes, conduits or other rights, or in the notarial act made in pursuance of this ordinance, shall be construed as binding the City of New Orleans, or in making the said city liable, directly or indirectly, or in warranty for any claim of citizens or corporations on account of said ordinance, grant, or notarial grant, or any claim for infringement of rights, or damages to persons or property caused by the grantees, or in any way resulting from the acts of said grantees, nor for any claim for damages, losses or injuries sustained by the said grantees, in case they should be deprived of their rights, or be interfered with in the exercise thereof by any person or corporation whatsoever, save it be by the lawfully constituted authorities of the city; nor shall the city be liable for any work done or material used in paving or repairing banquettes or

streets, or any public thoroughfare, in pursuance of this grant or under the direction of said contract with said grantees,

ART. 12. (11.) That said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, bind themselves to furnish, free of charge, charitable institutions, to be designated by the City Council, the same quantity of gas for illuminating purposes now supplied to the Asylum of the "Little Sisters of the Poor," Saint Vincent's "Infant Asylum," and Charity Hospital, by the New Orleans Gas Light Company.

ART. 13. (12.) That said Henry S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall pay the sum of ($20,000) twenty thousand dollars for the use of the privileges herein granted, to the city, before the delivery of gas to consumers shall be permitted, and in the event of the non-payment of said $20,000 all the rights, privileges and franchises granted to them by this ordinance shall be *ipso facto* null and void.

ART. 14. (13.) That at the expiration of said privilege, if the city shall so elect, the grounds, buildings, machinery and all other fixtures appertaining to the same shall revert to the City of New Orleans, at a valuation to be ascertained by two disinterested persons, one to be appointed by the grantees, as herein stated, or their legal successors, and the other by the city; and in the event of disagreement as to said valuation between said persons thus appointed, a third person or umpire shall be appointed by the Civil District Court of New Orleans, on the joint application of said parties, the decision thereby had to be final.

ART. 15. (14.) That H. S. Jackson and W. Van Benthuysen their successors, transferees and assigns, will, at the request of the Administrator of Improvements, and the concurrence of the City Council, lay pipes and mains and furnish gas in such portions of the city now lighted by gas.

ART. 16. (15.) That said H. S. Jackson and W. Van Benthuysen, their successors, transferees and assigns, shall deposit with the Mayor of the city a good and solvent bond in the sum of $20,000 at the time of accepting this ordinance for the faithful performance of the obligations herein provided, said bond to be returned to said grantees on the payment of the $20,000 bonus and completion of their works, and when the same are in operation, or in event that litigation shall prevent the performance of the obligations herein imposed.

The amount of said bond to revert to the city in the event of any combination or compromise being entered into between the grantees and any like corporation now existing and in operation, the amount of the said bond herein to be recoverable before any court of competent jurisdiction.

CHARTER OF THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY.

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known, That on this eighteenth day of April, in the year of our Lord one thousand eight hundred and eighty-one and of the Independence of the United States of America, the one hundred and fifth.

Before me, George William Christy, a notary public in and for the parish of Orleans and State of Louisiana aforesaid, duly commissioned and qualified and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the several persons, whose names are hereunto subscribed, who severally declared that, availing themselves of the provisions of the general laws of this State relative to the organization of corporations for works of public improvement, utility, etc., they have formed and organized and by these presents do form themselves into and constitute a corporation for the objects and purposes and under the agreements and stipulations following, which they hereby adopt as their charter.

ARTICLE I.

The name and title of said corporation shall be "The Louisiana Light and Heat Producing and Manufacturing Company," and it shall, by such name, have and enjoy succession for a period of ninety-nine years, commencing from and after the eighteenth day of April, eighteen hundred and eighty-one, and it shall have and exercise all the powers authorized by the general laws of this State relative to corporations. The domicile and principal place of business of said corporation shall be in said City of New Orleans, and the president and, in his absence, the vice president, and, in the absence of both, the secretary of the company is designated as the person or officer upon whom all citations and other legal process shall be served.

ARTICLE II.

The objects for which said corporation is formed are: to manufacture, furnish and sell gas or other agents for illuminating, heating, cooking, propelling or other purposes, and to grant, dispose and sell to others such patent rights and other privileges as are now or may hereafter be owned or controlled by said corporation in and about said business; and, for the objects above expressed, to purchase and sell whatever property may be necessary in the prosecution of said business, including real estate.

ARTICLE III.

The capital stock of said corporation is hereby declared to be the sum of one million two hundred and fifty thousand dollars, divided into and represented by twelve thousand five hundred (12,500) shares of the sum of one hundred dollars each, to be paid for at such times and in such manner as the Board of Directors of said corporation shall determine.

ARTICLE IV.

The business and affairs of said corporation shall be under the superintendence and management of a Board of Directors, to be composed of thirteen stockholders, each of whom shall own in his own name at least twenty shares of the stock of said corporation. Such Directors shall be annually elected by ballot at an annual meeting of the stockholders to be held for such purpose, on the second Tuesday of

December in each year, and they shall hold office for one year from the first day of January then next ensuing and until their successors be elected. Such elections shall be conducted under the supervision of a Committee on Credentials, to be appointed by the stockholders present. Each share of stock shall be entitled to one vote, either in person or by proxy, and prior notice of such annual meetings shall be given by publication daily for two weeks previous to the day above fixed, in a newspaper published in the City of New Orleans, and also in a newspaper published in the City of New York, in the State of New York, and also by mailing a printed notice of the same to each stockholder at his address, as the same appears upon the books of the corporation. A majority of all the stock of the corporation issued shall constitute a quorum at such elections. Should there be a failure to elect a Board of Directors at the time fixed for an annual meeting, a special meeting for an election of Directors shall be ordered by the Board in the manner previously provided for an annual meeting. The Board of Directors at their first meeting shall elect a President and such other officers as may be provided by the by-laws of the corporation. The Board shall have full power and authority to appoint such officers, clerks or agents as they may deem necessary for the business of said corporation, and to dismiss the same at the will of the Board, and to make and establish as well as alter and amend any and all by-laws, rules and regulations as they may deem necessary for the protection, support and management of the affairs, interest and business of said corporation.

A majority of said Directors shall constitute a quorum for the transaction of all business, and any vacancy that may occur in any Board from death or resignation shall be filled by election by the remaining members.

Any Director being about to absent himself for a period of ninety days, or less, must nominate a substitute in his stead; provided said substitute shall have in his own right not less than twenty shares of the capital stock of the company; and provided, also, that said substitute be elected by the Board of Directors for the time being.

The Board of Directors may accept, provisionally, any power or privilege conferred on this corporation by any amendment of the law under which the same is formed, or by the adoption of any new act or ordinance of the Legislature or City Council, but the final acceptance of any such power or privilege shall be determined by a vote of a majority in amount of the stockholders.

ARTICLE V.

Whenever this corporation is dissolved, either by limitation or from any other cause, its affairs shall be liquidated under the superintendence of three stockholders, to be appointed as commissioners for that purpose by the Board of Directors, who shall remain in office until the affairs of said company shall have been fully settled and liquidated, and in case of death of either of said commissioners the survivors shall continue to act.

ARTICLE VI.

No stockholder shall ever be held liable or responsible for the contracts or faults of said corporation in any further sum than the unpaid balance due the company on the shares owned by him. Nor shall any mere informality in organization have the effect of rendering this charter null or exposing any stockholder to any liability beyond the amount due on his stock.

ARTICLE VII.

This act of incorporation may be modified, changed or altered, or said corporation may be dissolved with the assent of three-fourths in amount of the capital stock thereof, at any general meeting of the stockholders convened for that purpose, after thirty days' notice of

such meeting shall have been published in two of the daily newspapers published in the City of New Orleans and in two of the daily newspapers published in the City of New York, and after notice in writing of such meeting, mailed by registered letter to each stockholder of record at his address, as the same appears on the books of the corporation.

ARTICLE VIII.

The capital stock of the corporation may be increased to any sum not exceeding in all the sum of two million two hundred and fifty thousand dollars, in the manner provided by law, with the consent of two-thirds in amount of all the stockholders obtained in general meeting, convened after thirty days' notice in writing to all of the stockholders of record, which notice shall be sent by registered letter to each of such stockholders at his address as the same appears upon the books of the corporation. Whenever any increase of capital shall be duly authorized, sixty days' notice of the same shall be given in two newspapers published in the City of New Orleans, and in two newspapers published in the City of New York, in the State of New York, within which time stockholders shall have the privilege of taking additional shares in proportion to the amount of their stock, and any shares not taken at the expiration of that term, may be disposed of by the Directors for the benefit of the corporation, but at not less than par value.

ARTICLE IX.

William W. Gibbs, William E. Stiger, John Scott, William Runkle, Ulysses Marinoni, B. Laplace, A. Marquez, James J. Reiss, John J. Gidiere, Fred N. Thayer, Henry Gardes, Samuel M. Todd and Watson Van Benthuysen have been selected and designated as the first Board of Directors of said corporation, and shall serve as such until the first day of January, of the year eighteen hundred and eighty-two, or until their successors be elected.

Thus done and passed, in my office in New Orleans aforesaid, in the presence of William Edward Todd and Alcide Willoz, lawful witnesses, both of this city, who herewith sign their names with the parties and me, the said notary, the day and date aforesaid.

Original signed—

W. Van Benthuysen,	William W. Gibbs,
William Runkle,	William E. Stiger,
by W. W. Gibbs, Att'y,	by W. W. Gibbs, Att'y,
Emmet R. Olcott,	B. Laplace,
Fred N. Thayer,	Henry Gardes,
Sam'l M. Todd,	U. Marinoni,
Jas. J. Reiss,	John Scott,
A. Marquez,	H. Labasse,
Jno. J. Gidiere,	W. E. Todd,
Henry S. Jackson.	A. Willoz,

GEO. W. CHRISTY, Notary Public.

I, the undersigned, Recorder of Mortgages, in and for the Parish of Orleans, State of Louisiana, do hereby certify, that the above and foregoing act of incorporation of "The Louisiana Light and Heat Producing and Manufacturing Company," was this day duly recorded in my office in book No. 152, folio 624.

ALBERT MICHEL,
Deputy Recorder.

New Orleans, April 23d, 1881.

I hereby certify the foregoing to be a true copy of the original act of Charter, as it stands recorded in my notarial register. In witness whereof I grant these presents under my signature and seal of office.

GEO. W. CHRISTY, Notary Public.

New Orleans, April 27th, 1881.

115-650

Charter and By-Laws

OF

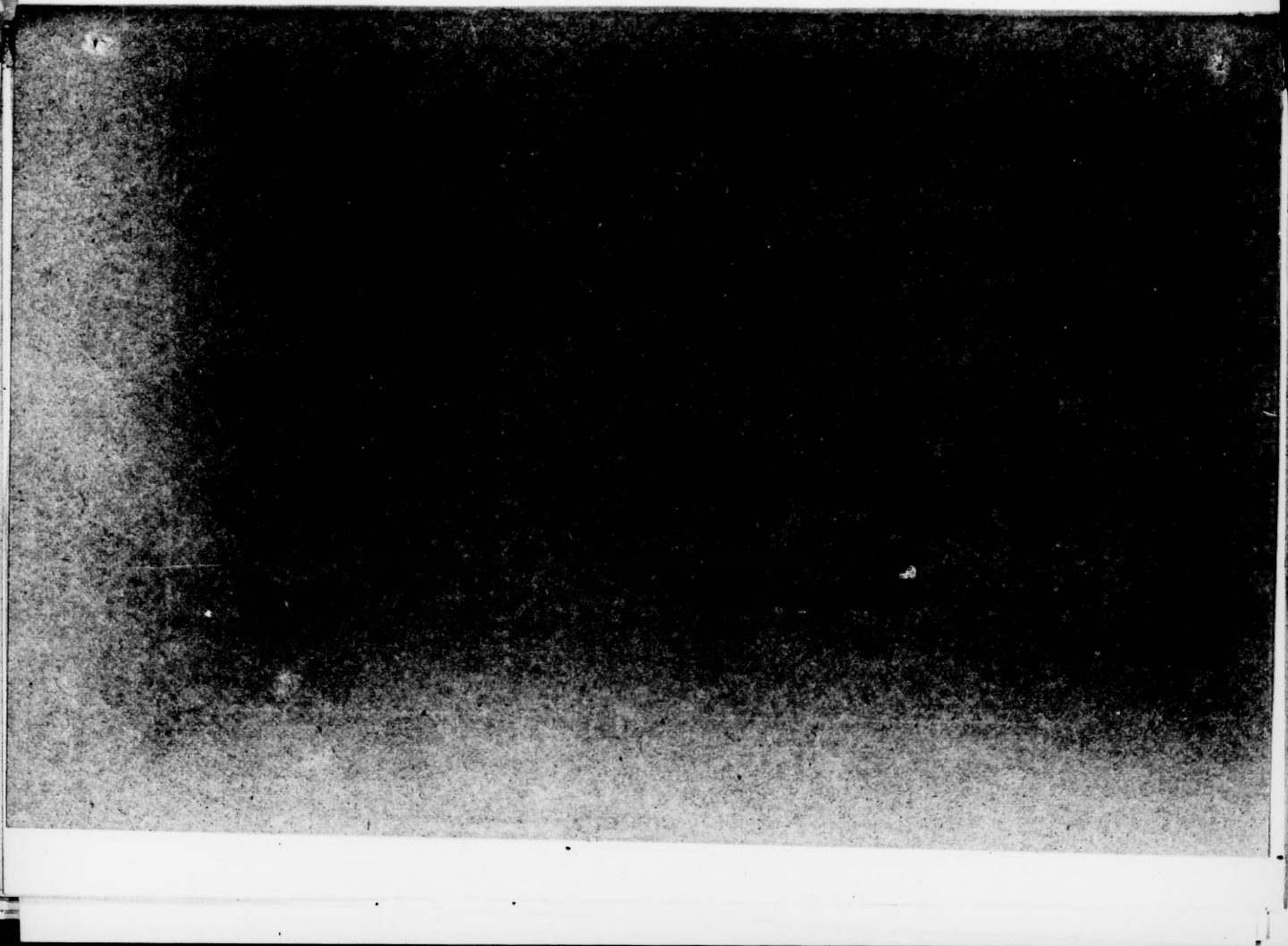
THE N. O. GAS LIGHT COMPANY,

AS RE-ORGANIZED,

By Consolidation with the Crescent City Gas Light Company,

APRIL 1, 1875.

NEW ORLEANS:
JAS. A. GRESHAM, BOOKSELLER AND STATIONER, 26 CAMP STREET.
1875.



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CHARTER

OF

The New Orleans Gas Light Company,

AS REORGANIZED

By Consolidation with the Crescent City Gas Light Company,

APRIL 1st, 1875.

No. 97. **AN ACT**

TO INCORPORATE THE CRESCENT CITY GAS LIGHT COMPANY.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened:*

Incorporators.

THAT JOSEPH H. OGLESBY, WILLIAM CREEVY, FRANCIS J. HERRON, F. W. PERKINS, S. D. MCPHERSON, GEORGE F. SHERMAN, W. B. CORNELL, W. HAWKSWORTH, and their present and future associates, successors and assigns, be and they are hereby constituted and declared to be, from and after the passage of this Act, a body corporate and politic, in

Title.

fact and in name, by the style and title of "THE CRESCENT CITY GAS LIGHT COMPANY," and by that name they and their successors shall and may have continual succession, and shall be persons in law, capable of sueing and being sued; pleading and being impleaded; answering and being answered unto; defending and being defended in all Courts and places whatsoever; and that they and their successors may

Seal.

have a common seal, and may change and alter the same at pleasure; and also, that they and their successors by the same name and style shall be in law, capable of

Power to hold Real Estate.

holding, purchasing and conveying any estate, real or personal, for the use of said Corporation. *Provided,* That the lands, tenements and hereditaments which it shall be lawful for said Corporation to hold, shall be only such

as shall be requisite for its immediate accommodation in relation to the convenient transaction of its business, and the properly carrying on and conducting of its works; or such as shall have been mortgaged to it, in satisfaction of debts contracted in the course of its dealings, or purchased at sales, upon judgments which shall have been obtained for such debts.

Capital Stock $3,000,000.

SECTION 2. *Be it further enacted, etc.*, *THAT the capital stock of said Corporation shall be three million dollars, to be divided into thirty thousand shares of one hundred dollars each.

Subscriptions to Stock.

SECTION 3. *Be it further enacted, etc.*, THAT books for subscription to the capital stock of said Company shall be opened in New Orleans, and under the management and superintendence of the incorporators, who shall fix the time and places for receiving such subscriptions, giving due notice of the same through the daily papers; and that after seven thousand five hundred shares are subscribed, the incorporators shall call a meeting of the subscribers, for the purpose of electing a board of directors, whose term of office shall be until the first Tuesday of January following their election as such: *Provided*, †That no one shall be elected as director who is not a resident of the State of Louisiana, and the owner of one hundred shares of the stock: *Provided, further*, That the incorporators shall have the power to fix the per centum to be paid upon subscribing to the stock, and the time at which further instalments shall be called in, until the election of the first board of directors, when this power shall rest with them and their successors in office.

Directors.

Qualifications.

Instalments.

President and Secretary.

SECTION 4. *Be it further enacted, etc.*, ‡THAT the office of said Company shall be located in New Orleans; that the works and affairs of said Company shall be managed and conducted by a board of six directors, who shall elect one of their own number President, and shall also elect a

* See Agreement of Consolidation, Article 2, page 14.

† This restriction was removed by Act No. 106, (July, 1873). See page 7, Sec. 1.

‡ This Section was amended by Act No. 106, (July, 1873). See page 7, Sec. 1

Secretary; and that from and after the first election of directors, an annual election for directors shall be held on the first Tuesday of each year, due notice of the same to be given by the Secretary of the Company through the daily papers, for thirty days previous to the time fixed for said election; the election to be held at the office of the Company, each share of stock to be entitled to one vote, either by the owner in person or by proxy, and the person receiving the highest number of votes to be declared duly elected; the board of directors to fix the compensation of the President and other officers and employees of the Company.

Annual election for Directors.

How held.

Salaries.

SECTION 5. *Be it further enacted, etc.*, THAT if any director shall remove out of the State, or cease to be a stockholder, his office shall be declared vacant; and whenever any vacancy or vacancies shall happen among the directors by death, resignation, or otherwise, such vacancy or vacancies shall be filled for the remainder of the year in which they shall happen by such person or persons as the remainder of the directors for the time being, or a majority of them shall appoint.

Vacancies How filled.

SECTION 6. *Be it further enacted, etc.*, *THAT a majority of the board of directors shall constitute a board for the transaction of business, and shall have power to make and prescribe such by-laws, rules and regulations as shall appear needful and proper, and shall have the power of appointing as many officers, clerks and assistants as may be necessary for carrying on the business and affairs of the Company, allowing them such salary as they may see proper.

Directors shall have power

To make By-Laws.

Appointments

And fix Salaries.

SECTION 7. *Be it further enacted, etc.*, †THAT half-yearly dividends shall be made of so much of the profits of said Company as the directors may think advisable, and that at each annual meeting for the election of directors, the outgoing directors shall lay before the stockholders a statement of all the affairs and concerns of the Company for their information.

Half Yearly Dividends.

Statement of affairs

* See Agreement of Consolidation, Article 6, page 16.

† See Agreement of Consolidation, Article 5, page 16.

SECTION 8. *Be it further enacted, etc.,* *THAT the Crescent City Gas Light Company, their successors and assigns, shall have and be entitled to the sole and exclusive privilege of making and vending gas lights in the City of New Orleans, to such persons or bodies corporate who may voluntarily choose to contract for the same, for the term of fifty years, from and after the date of the expiration of the Charter of the New Orleans Gas Light Company.

Exclusive privilege for 50 years.

SECTION 9. *Be it further enacted, etc.,* THAT to carry the foregoing Section into effect, they shall be authorized after the passage of this Act, to lay pipes or conduits at the expense of the Company, in any of the streets or alleys of said City of New Orleans, where the same may be required, in such manner as may produce the least inconvenience to the City or its inhabitants, *and provided, also,* That the Company shall afterwards repair, with the least possible delay, the streets they have broken.

Power to lay pipes.

SECTION 10. *Be it further enacted, etc.,* THAT if any person or persons shall, by any means whatever, destroy any part of the gas pipes constructed or owned by the said Company, or any of their works, buildings, fixtures, or machines, such person or persons shall, each of them, be liable for all damages occasioned thereby.

Any person destroying the property of the Company to be liable for damages.

SECTION 11. *Be it further enacted, etc.,* THAT the Crescent City Gas Light Company is authorized and empowered to manufacture gas from any and all materials suitable for such purpose, and shall have power to purchase and use any patent or patents, or the right to the same for the manufacture of such gas lights.

Power to purchase Patents and Patent Rights.

SECTION 12. *Be it further enacted, etc.,* THAT the works of said Company must be complete and in condition to supply the proper amount of gas required for the City of New Orleans, within ten years from and after the date of the passage of this Charter; and in case of failure the Charter to be null and void.

Works to be complete in ten years.

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* See Act No. 106, Section 1, paragraph 3; also Section 3, page 8.

SECTION 13. *Be it further enacted, etc.,* THAT all acts and parts of acts heretofore passed, conflicting in any manner with the provisions of this Act of Incorporation, are hereby repealed.

MORTIMER CARR,
Speaker of the House of Representatives.
OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved April 20th, 1870.

H. C. WARMOTH,
Governor of the State of Louisiana.

No. 106. AN ACT

TO AMEND AND RE-ENACT AN ACT ENTITLED AN ACT TO INCORPORATE THE CRESCENT CITY GAS LIGHT COMPANY, APPROVED APRIL 20, 1870, AND TO FIX WITH MORE PRECISION THE TIME WHEN SAID COMPANY SHALL GO INTO OPERATION, AND TO AUTHORIZE SAID COMPANY TO ISSUE MORTGAGE BONDS, TO CHANGE THE TIME FOR ELECTION OF DIRECTORS, AND TO LIMIT THE PRICE TO BE CHARGED FOR GAS.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* THAT an act entitled an act to incorporate the Crescent City Gas Light Company, approved April 20, 1870, be so amended—

1. That the board of directors of said Corporation are hereby authorized by by-laws to determine the number of said directors, which shall consist of not less than three, nor more than nine persons; that any person who is the owner of ten shares of stock may be a director. Said board shall elect a president and vice president from their own body, and a secretary and treasurer, either members or not of their own body.

Directors and Officers.

2. That the annual election for the board of directors shall take place on the second Tuesday of January of each year; ten days notice of the same shall be given through two daily papers of the City of New Orleans.

Election for Directors.

3. That said Corporation shall have power to issue bonds, not exceeding in amount one million of dollars, to be secured

Power to issue bonds. by mortgage on the works and property of said Corporation; that the time of maturity and rate of interest of said bonds shall be fixed by the board of directors.

4. That the said Corporation shall not charge more than four dollars per thousand cubic feet for gas, except in case of war or blockade.

Price of Gas

5. That the date of expiration of the charter of the New Orleans Gas Light Company, as mentioned in section eight of the charter hereby amended, is hereby declared to be the first day of April, A. D., 1875.

Date of Charter.

SEC. 2. *Be it further enacted, etc.*, THAT all the franchises and rights granted by the act hereby amended, and by this act, be and the same are hereby confirmed unto the said Crescent City Gas Light Company, from the first day of April, A. D., 1875, for the term fixed in their Charter.

Franchises confirmed.

That sections nine and twelve of the act hereby amended shall not be deemed at all affected by this act.

SEC. 3. *Be it further enacted, etc.*, THAT the term "City of New Orleans," as used in the eighth section of the act hereby amended, shall be deemed to include all parts of the present City of New Orleans, and any additions which may at any time be made thereto, not conflicting in any manner with the charter of the Jefferson City Gas Light Company.

Territory defined.

That all parts of the act hereby amended which conflict with this act, and so far as they conflict with this act, be and the same are hereby repealed.

That all other acts, and all parts of other acts conflicting with this act, or with the act hereby amended, be and the same are hereby repealed.

CHARLES W. LOWELL,
Speaker of the House of Representatives.

C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved July 10, 1873.

WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

IN THE SUPREME COURT OF LOUISIANA.

CRESCENT CITY GAS LIGHT COMPANY,

versus

NEW ORLEANS GAS LIGHT COMPANY.

APPEAL FROM SUPERIOR DISTRICT COURT.

EXTRACTS

FROM THE DECISION OF THE COURT RENDERED FEBRUARY 1, 1875, AFFIRMING THE VALIDITY OF THE ACTS INCORPORATING THE CRESCENT CITY GAS LIGHT COMPANY.

"Are the acts of 20th April, 1870, and 10th July, 1873, incorporating the plaintiff company and conferring on it the sole and exclusive privilege of making and vending gas in the city of New Orleans for fifty years, from 1st April, 1875, repugnant to article 114 of the Constitution of 1868, requiring the object of every law to be expressed in the title, and likewise repugnant to said constitution, in so far as the said acts create a monopoly in favor of plaintiff?

Are the Acts Constitutional

* * * * * * * * *

"We come now to the question whether the acts incorporating the plaintiff's company, and conferring on it the sole and exclusive right to make and vend illuminating gas in the city of New Orleans for fifty years, from 1st April, 1875, are repugnant to article 114 of the constitution of 1868, then in force, requiring the object or objects of every law to be embraced in its title. And here the main objection is as to the title of the act of 20th April, 1870; that its title, "An act to incorporate the Crescent City Gas Light Company," does not cover the monopoly contained in the 8th section thereof; that there is nothing in it indicating its purpose to grant it sole and exclusive privilege to make and vend gas in the city of New Orleans for fifty years, from 1st April, 1875. To this the plain-

Objections stated.

tiff replies, that, under a similar title, a monopoly of the same kind was granted to the defendant in the charter of 1835, which was recognized by this Court in the case of Paulding, (12 Rob., 378,) and which has been enjoyed by the defendant for nearly forty years without its validity having been questioned by any one. But the object of the act, as stated in the title, was "to incorporate the Crescent City Gas Light Company." To incorporate a company is to create it with certain powers and privileges, which need not be detailed, for if they were the title would be as long as the act. The title of the act disclosed the creation of a gas company; this was sufficient to cover the monopoly, or exclusive privilege to make and vend gas.

Title sufficient to cover monopoly.

"The precise question was before this court in the Louisiana Lottery Company vs. Richoux et al., (23 A., 743,) and also in the State ex rel. Belden vs. Fagan, (22 A., 546,) where it was held that an exclusive privilege or monopoly could be granted under the usual title to incorporate a company. And in their decision it was held that the State could create a monopoly; that it could give the Crescent City Slaughterhouse Company the exclusive privilege to keep a slaughterhouse, and that it could confer on the Louisiana Lottery Company the exclusive privilege to sell lottery tickets.

State can create a monopoly.

"However odious monopolies may be, the sole question for the Court to determine in this case is, had the Legislature the power under the constitution to grant to plaintiff the sole and exclusive right to manufacture and sell illuminating gas in the city of New Orleans for fifty years? If they had the power, they cannot be controlled by the judicial department in the exercise thereof, however unwisely they have chosen to employ it. Their responsibility is not to the Court, but to the people, whose agents they were, for this unwise, unfair and arbitrary exercise of the power of legislation confided to them. In its own sphere the Legislature is supreme, except when restricted by the constitution of the State, or of the United States.

Legislature supreme.

"Now what clause of these constitutions has been violated in

the case at bar? Is the bill of rights: All persons "shall enjoy the same civil, political and public rights and privileges, and be subject to the same pains and penalties," in any manner invaded? Is "life, liberty or the pursuit of happiness" of any person in the city of New Orleans assailed by the statute, granting the sole and exclusive privilege to plaintiff to operate gas works in New Orleans for fifty years? The right to operate gas works and to illuminate a city is not an ancient or usual occupation of citizens generally. No one has the right to dig up the streets and lay down gas pipes, erect lamp posts, and carry on the business of lighting the streets and the houses of the city of New Orleans, without special authority from the sovereign. It is a franchise belonging to the State, and in the exercise of the police power the State could carry on the business itself, or select one or several agents to do so. And as the Legislature had the right in 1835, to grant the sole and exclusive privilege to the defendant Company to make and vend gas in New Orleans for forty years, the Legislature of 1870 had the same power to confer on the plaintiff the same privilege for fifty years from the termination of the grant to defendant. We, therefore, conclude that the grant of the monopoly complained of does not violate the constitution, and it is valid.

Gas lighting a public franchise belonging to the State.

Grant of monopoly is valid.

"In regard to the intervention of the city of New Orleans, we will remark that the right reserved by the State for it to become purchaser of the gas works, fixtures, machines, pipes, etc., at the expiration of the charter of the defendant, was not such a vested right that the State could not withdraw or recall without contravening that provision of the Constitution of the United States prohibiting a State from impairing the obligations of a contract. Conceding that the authority given to the city, if she saw fit, at the expiration of defendant's charter, to purchase the gas works, by implication conferred authority to operate said works, the State had the right to recall or withdraw the authority, as it did in the act of 1870, before the time for using the authority arrived. And the grant of the sole and exclusive privilege

City's right of purchase.

Withdrawn by Act No. 97.

to plaintiff to make and vend gas is utterly repugnant to the right of any other person or corporation to make and vend gas in New Orleans. And this grant, by implication, revoked or recalled any previous authority given the city to buy the gas works of the defendant on 1st April, 1875, for the purpose of making and vending gas.

"The powers and privileges granted by the State to the city of New Orleans, and other political corporations used in the administration of government, may be recalled or modified by the Legislature at pleasure. And in doing so they violate no contract protected by the Constitution of the United States.

"We therefore conclude that the intervention of the city of New Orleans cannot be maintained.

"It is, therefore, ordered that the judgment herein be set aside and annulled, and it is decreed that the plaintiff, the Crescent City Gas Light Company, have the sole and exclusive right to make and sell illuminating gas in the city of New Orleans for fifty years from April 1, 1875; that the act of March 1, 1860, extending the charter of the defendant, the New Orleans Gas Light Company, from April 1, 1875, until April 1, 1895, is unconstitutional and void; and that the defendant be enjoined and inhibited from setting up any claim thereunder, or from attempting to carry on the operation of gas works or the business of making and vending gas after the 1st April, 1875, or from in any manner impeding the plaintiff from the full enjoyment of its franchises, rights and privileges, arising under the acts of April 20, 1870, and July 10, 1873. It is further ordered that the intervention of the State be dismissed with costs, and the demand of the intervenor, the city of New Orleans, be rejected with costs of its intervention. It is further ordered that the defendant pay costs of both courts."

Decree.

Defendants enjoined.

State intervention dismissed.

No. 157. **AN ACT**

TO AUTHORIZE THE CONSOLIDATION OF BUSINESS OR MANUFACTURING CORPORATIONS OR COMPANIES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* THAT any two business and manufacturing Corporations or Companies now existing under general or special law, whose objects and business are in general of the same nature, may amalgamate, unite and consolidate said Corporations or Companies, and form one Consolidated Company, holding and enjoying all the rights, privileges, powers, franchises and property, belonging to each, and under such corporate name as they may adopt or agree upon. Such consolidation shall be made by agreement in writing, by or under the authority of the board of directors, and the assent of the owners of at least three-fifths of the capital stock of each of said Corporations or Companies; and a certificate of the fact of such consolidation, with the name of the Consolidated Company, shall be filed and recorded in the office of the Secretary of State; *Provided,* no such consolidation shall in any manner affect or impair the right of any creditors of either of said Companies. In the agreement of consolidation the number of directors of the Consolidated Company shall be specified, and the capital stock may be any amount agreed upon by the Companies or Corporations, and set forth in the Articles of Consolidation.

SECTION 2. *Be it further enacted, etc.,* THAT all laws or parts of laws conflicting in any manner with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect from and after its passage.

CHAS. W. LOWELL,
Speaker of the House of Representatives.

C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved December, 12, 1874.

WM. P. KELLOGG,
Governor of the State of Louisiana.

ARTICLES OF CONSOLIDATION.

AN AGREEMENT TO CONSOLIDATE "THE NEW ORLEANS GAS LIGHT COMPANY" AND "THE CRESCENT CITY GAS LIGHT COMPANY" INTO ONE COMPANY, UNDER THE NAME OF **"The New Orleans Gas Light Company,"** BY VIRTUE OF ACT NO. 157, OF THE GENERAL ASSEMBLY OF THE STATE OF LOUISIANA, APPROVED DECEMBER 12, 1874.

The President and Board of Directors of "The New Orleans Gas Light Company," and the President and Board of Directors of "The Crescent City Gas Light Company," availing themselves of the provisions of an act of the General Assembly, No. 157, approved December 12, 1874, entitled "An act to authorize the consolidation of business or manufacturing Corporations or Companies," do hereby, on this 29th day of March, in the year 1875, enter into the following agreement of union, amalgamation and consolidation, which is to become final and binding whenever the same shall receive the assent of the owners of three-fifths of the capital stock of each of said Corporations.

Agreement to consolidate

ARTICLE 1. The objects and business of the two Companies being of the same nature, the amalgamating Companies shall form one Consolidated Company, under the name and style of "The New Orleans Gas Light Company."

Name of Consolidated Company.

ART. 2. The capital stock of the Consolidated Company is hereby fixed at ten million dollars, ($10,000,000), of which the sum of three millions seven hundred and fifty thousand dollars, ($3,750,000,) represented by thirty-seven thousand five hundred (37,500) shares, of one hundred dollars ($100) each, is to be considered as, and is hereby declared to be full paid, at the ratification of this agreement; and the residue of six millions, two hundred and fifty thousand dollars, ($6,250,000) may be issued in such sums, and at such times as the Board of Directors may deem proper, from any accumulated earnings invested in works or plant during the operations of the Consolidated Company; such issues of stock to be distributed pro rata among the stockholders of the Consolidated Company.

Capital Stock $10,000,000

$3,750,000 paid up.

Directors may issue the residue pro rata from time to time.

ART. 3. The entire number of shares of stock issued to this date by the New Orleans Gas Light Company is nineteen thousand eight hundred, (19,800), of one hundred dollars ($100) each; and the owners of said shares are entitled under this agreement to two millions five hundred thousand dollars, ($2,500,000) of the full paid stock of the Consolidated Company; that is to say, twenty-five thousand (25,000) shares are to be distributed pro rata among the owners of said nineteen thousand eight hundred (19,800) shares in the manner following: The certificates of stock now held by the owners of said nineteen thousand eight hundred (19,800) shares are hereby accepted, adopted and recognized and considered as certificates of stock issued by the Consolidated Company, representing nineteen thousand eight hundred shares (19,800) of the twenty-five thousand (25,000) shares allotted under this agreement to the stockholders of the New Orleans Gas Light Company, and the residue of said twenty-five thousand (25,000) shares of stock of the Consolidated Company, to-wit: five thousand two hundred shares (5,200) are to be issued in new certificates, and delivered to the owners of said nineteen thousand eight hundred (19,800) shares of the New Orleans Gas Light Company, pro rata to each stockholder, in proportion to the amount of stock held by him.

Stockholders of old Company entitled to 25,000 shares of consolidated stock.

Old certificates of stock recognized as certificates of consolidated Company.

New certificates for 5,200 shares to be issued pro rata.

ART. 4. The entire stock of the Crescent City Gas Light Company issued at this date is three million dollars, ($3,000,000) represented by thirty thousand (30,000) shares of one hundred dollars ($100) each. All certificates for stock issued by the said Crescent City Gas Light Company are hereby annulled and cancelled, and considered as of no legal effect, or in any manner binding on the Consolidated Company, to which Company the said cancelled certificates, together with the archives and rights and property of said Crescent City Gas Light Company are to be transferred and conveyed and surrendered upon the ratification of this agreement; and in lieu thereof, there shall be issued to Henry Y. Attrill, as repre-

All certificates of stock issued by Crescent City Company annulled and cancelled.

Cancelled certificates, archives and property of Crescent City Co. to be surrendered to consolidated Co.

sentative of all the stockholders of the Crescent City Gas Light Company, and at their request, certificates for twelve thousand five hundred (12,500) shares of full paid stock of the Consolidated Company, amounting in the aggregate to one million two hundred and fifty thousand dollars, ($1,250,000); the same being the proportional part of the three million seven hundred and fifty thousand dollars ($3,750,000) of full paid stock assigned and allotted under this agreement to the stockholders of the Crescent City Gas Light Company.

New certificates for 12,500 shares in consolidated Company to be issued to H. Y. Attrill representing stockholders of Crescent City Company.

ART. 5. A dividend of six per cent. is to be made on July 1, 1875, payable only to the stockholders holding the certificates for said nineteen thousand eight hundred (19,800) shares of stock heretofore issued by the New Orleans Gas Light Company; and on January 1, 1876, a dividend of six per cent is to be made among all the stockholders of the Consolidated Company, from the actual nett profits realized between July 1st and December 31, 1875, together with any excess of profits remaining from the operations of the first half year, after paying the dividend above mentioned of July 1, 1875, to the nineteen thousand eight hundred (19,800) shares of the New Orleans Gas Light Company; and thereafter, regular semi-annual dividends are to be paid in January and July of each year, of six per cent. or more, in this city, or in the city of New York, (in such manner as may be prescribed by the by-laws of the Company,) at the option of the stockholder; *Provided*, that no dividend shall in any event, exceed in amount the actual nett profits of the Company, after deducting therefrom a proper provision for depreciation, maintenance, extensions and contingencies; and in case the nett earnings do not afford a dividend of six per cent., the dividend shall be made of the amount actually earned; but extra dividends may be made from time to time, if earned.

Dividend in July, 1875, payable only upon old stock of N. O. Gas Light Company.

Dividend in January 1876, and thereafter, payable upon the whole consolidated stock.

Dividends to be 6 per cent. or more semi-annually in January and July.

Payable in N. O. or N. York.

Dividends not to exceed nett profits.

Extra dividends.

ART. 6. The Board of Directors of the Consolidated Compano shall consist of seven members, four of whom shall consti-

Directors.

tute a quorum; and the regular elections of directors shall take place at the time specified, and in the manner provided in Section 1, of the act of July 10, 1873, amending the charter of the Crescent City Gas Light Company; each share of stock represented by the owner or his proxy being entitled to one vote, and the holder of ten shares shall be eligible as a director. Until the next regular election, said board shall consist of the following named stockholders, viz: James Jackson, B. Biscoe, Charles Macready, John Geddes, James W. Burbridge, Duncan F. Kenner, and Henry Y. Attrill.

Elections for Directors.

Each share entitled to one vote.

The Board of Directors shall have power to make and prescribe such by-laws, rules and regulations as shall appear to them needful and proper; and shall appoint as many officers and clerks and assistants as may be necessary for carrying on the business and affairs of the Company, allowing them such salaries as they may see fit; and shall have the general management, control and administration of the property and affairs of the consolidated Company.

Directors to make By-Laws.

Employ Clerks, etc.

Fix salaries.

ART. 7. The stockholders of the present New Orleans Gas Light Company, are entitled to whatever accumulated surplus said Company may possess on April 1, 1875, to be distributed pro ratâ among the holders of the nineteen thousand eight hundred (19,800) shares of stock of the present New Orleans Gas Light Company; and the right to dividends from said surplus shall be appurtenant to the said nineteen thousand eight hundred shares of stock.

Stockholders of old Company entitled to surplus existing Ap'l 1, 1875.

ART. 8. The Gas Works, machinery, main pipes, service pipes meters, lamps erected, and all other property actually in use for the business of gas manufacture and distribution on April 1, 1875, including all real estate in New Orleans, (except the building No. 159 Common street,) belonging to the New Orleans Gas Light Company, as well as all the franchises, powers, privileges and property of the Crescent City Gas Light Company, especially the exclusive privilege of making and vending gas lights in the city of New Orleans for fifty years, from April 1, 1875,

Property transferred to consolidated Company.

Exclusive privilege transferr'd to consolidated company.

granted to the Crescent City Gas Light Company by act approved April 20, 1870, and confirmed by act approved July 10, 1873, are hereby transferred to and vested in the consolidated Company, which is authorized to use the property aforesaid, and operate under the charter of the said Crescent City Gas Light Company. But this transfer is not intended to include the surplus of the New Orleans Gas Light Company mentioned in Article 7, of this agreement, which said surplus consists of the building No. 159 Common street, all stocks, bonds, mortgages and other evidences of debt from the city of New Orleans and private parties and companies, over and above cash liabilities on April 1st, 1875, also surplus stocks of coke, shells, new retorts, gas pipes, meters and other materials purchased in anticipation of future needs, on hand April 1, 1875, except coal; the stock of coal then on hand being transferred to the consolidated Company as an offsett against all amounts for which the New Orleans Gas Light Company is liable to consumers of gas as deposits for security of bills; which liability is hereby assumed by the consolidated Company.

Surplus of old Company defined.

Stock of Coal on hand to offsett deposits for gas.

ART. 9. The Consolidated Company shall supply with gas the Charity Hospital free of all expense until otherwise ordered by the Board of Directors; and gas shall be furnished to all Orphan Asylums situated on the lines of mains of the Company at the price of two dollars ($2 00) per 1000 cubic feet, unless otherwise ordered by the Directors.

Charity Hospital.

Orphan Asylums.

ART. 10. The Consolidated Company shall not charge more than four dollars ($4 00) per 1000 cubic feet of gas, except in case of war or blockade. The price of gas is, for the present, fixed at four dollars ($4) per 1000 cubic feet, subject to change by the Board of Directors; and the Directors may, from time to time, fix a rate of discount for prompt payment of bills, as they may deem proper. The rate of discount is, for the present, established at fifty cents per 1000 cubic feet, upon gas consumed through meters from and after May 1st, 1875.

Price of Gas.

Discount for prompt payment.

ART. 11. The officers, clerks and servants of the present New Or-

Officers, Clerks, etc. of the old Company retained.

leans Gas Light Company shall become, *ipso facto*, the officers, clerks and servants of the Consolidated Company; and they are hereby confirmed in their respective positions and salaries and terms of office, as hitherto established, their terms of service in behalf of the present New Orleans Gas Light Company being recognized and considered as if spent in the service of the Consolidated Company. The Consolidated Company may provide for the retirement on a pension equivalent to half-pay of all its faithful officers, clerks and servants, when they shall have been in its service or that of the present Company, or both, for the full term of twenty years; or proportionately for a shorter period, when they shall become superannuated or incapacitated for duty from accident or disease, while in the service of the Company.

Provision for Pensions.

ART. 12. That all the right, title and interest of the present New Orleans Gas Light Company in the property included in the surplus mentioned in Article 7, and described in Article 8, is hereby vested in the Consolidated Company as trustee for the stockholders of the present New Orleans Gas Light Company, to be administered and disposed of by the Board of Directors of the Consolidated Company for the benefit of the holders of the aforesaid nineteen thousand eight hundred (19,800) shares of the stock of the present New Orleans Gas Light Company; and said property which is susceptible of division in kind, shall be at once divided in kind, except the real estate and materials on hand, and mortgage notes and claims. The real estate is to be sold on reasonable terms; and the mortgage notes and claims to be collected and proceeds divided as collected. The said Board of Directors shall have power to adjust, settle and compromise claims and mortgage notes; the materials on hand may be disposed of to the Consolidated Company or otherwise as the Board of Directors may determine.

Surplus to be administered by Directors of consolidated Company.

Division in kind.

Real estate

Mortgage notes.

Materials.

ART. 13. The Board of Directors of the Consolidated Company are authorized to carry out the details of this consolidation and to regulate all matters for this purpose, not specially provided for in this agreement.

Directors to carry out details of consolidation.

In Testimony Whereof, James Jackson, President, and B. Biscoe, Charles Macready, John Geddes, and James W. Burbridge, Directors of the New Orleans Gas Light Company;

And Henry Y. Attrill, President, and Charles Gibson, Thomas L. Wibray, and J. M. Conway, Directors of the Crescent City Gas Light Company, have hereunto set their respective names, on the day and year above written, and the seals of said respective Companies are hereto affixed.

N. O. Gas Light Company.
SEAL.

JAMES JACKSON, *President.*
B. Biscoe,
Chas. Macready,
John Geddes,
J. W. Burbridge,

Crescent City Gas Light Co.
SEAL.

HY. Y. ATTRILL,
Pres. C. C. G. L. Co.
C. Gibson,
Thos. L. Wibray,
J. M. Conway,

RATIFICATION OF THE AGREEMENT OF CONSOLIDATION BY THE STOCKHOLDERS OF THE NEW ORLEANS GAS LIGHT COMPANY.

Office of New Orleans Gas Light Company,
Corner of Common and Baronne Streets.

Be it Remembered, that on this day, to-wit: Friday, the ninth day of April, 1875,

At a general meeting of the stockholders of this, the New Orleans Gas Light Company, convened pursuant to a resolution of the Board of Directors of said Company, due notice of which was given by advertisement published in the daily papers of this City for ten days previous to the present date, for the purpose of deliberating whether they would or would not assent to and ratify certain Articles of Consolidation agreed upon by and between the President and Directors of this, the New Orleans Gas Light Company of the one part, and the President and Directors of the

Crescent City Gas Light Company of the other part, entered into under the provisions of an act of the General Assembly of Louisiana, approved December 12, 1874, No. 157, entitled "An act to authorize the consolidation of business or manufacturing corporations or companies," James Jackson was called to the chair and Theobald Forstall appointed Secretary.

The said agreement of consolidation, the original text of which is of record, on pages 435 to 439 of the Record Book of this Company, having been read to the meeting, the Chairman submitted the following resolution of the Board of Directors, adopted April 7, 1875:

RESOLVED, That Articles of Consolidation agreed upon between the President and Directors of the New Orleans Gas Light Company, and the President and Directors of the Crescent City Gas Light Company, under the provisions of Act No. 157, approved December 12, 1874, be and are hereby presented to the regular meeting of stockholders to be held on April 9, 1875, with the recommendation of the preliminary meeting held on April 6th, for their assent and ratification.

The following resolutions were then offered, seconded and adopted:

RESOLVED, That this meeting do approve and assent to the Agreement of Consolidation just read, as engrossed in the Record Book of this Company.

RESOLVED, FURTHER, That each stockholder attach his signature to these resolutions, as recorded in the Record Book of the Company, with the number of shares owned or represented by him.

[Signed by stockholders representing 14,359 shares of the Company's stock.]

And the said stockholders, representing fourteen thousand three hundred and fifty-nine shares of the capital stock of the Company, being more than three-fifths of the same, and no stockholder having voted in the negative, it is thereupon declared that by the will of the stockholders, so as aforesaid expressed, the said agreement of consolidation is assented to and ratified; and it is thereupon therefore ordered that an original copy of these

proceedings be transmitted to the Secretary of State to be by him deposited in the archives of his office, to the end that in conformity with the provisions of the Act of the General Assembly, No. 157, aforesaid, due and public notice be given of the ratification of the said agreement by stockholders representing more than three-fifths in value of the capital stock of said Company.

Adjourned.

JAMES JACKSON, *Chairman.*

Attest:

THEOB'D FORSTALL, *Secretary.*

RATIFICATION BY THE STOCKHOLDERS OF THE CRESCENT CITY GAS LIGHT COMPANY.

STOCKHOLDERS' MEETING.

OFFICE CRESCENT CITY GAS LIGHT COMPANY,
No. 50 CAMP STREET,
April 9, 1875, 6 o'clock, P. M.

The meeting called for 10 o'clock, this A. M., having been adjourned until this hour, on account of the absence of Mr. H. Y. Attrill, (holding a large majority of the stock) was called to order by the appointment of T. L. Wibray as Chairman, and J. M. Conway, as Secretary, all the stockholders being present.

Mr. H. Y. Attrill reported as follows to the meeting: That the Board of Directors of this Company had effected an amalgamation with the New Orleans Gas Light Company, under the provisions of Act 157, 1874; and that the agreement was now presented to the stockholders for their assent and ratification.

After having been read and considered: on motion, the action of the Board of Directors was approved and the agreement for amalgamation was ratified and assented to; thirty thousand shares voted aye, against, none.

The President was authorized to do all things necessary to carry out and perfect said agreement, and all matters arising out of the same, said agreement being the same as hereinbefore copied.

On motion, the meeting then adjourned

THOS. L. WIBRAY, *Chairman.*

J. M. CONWAY, *Secretary.*

CERTIFICATE OF THE SECRETARY OF STATE.

STATE OF LOUISIANA,
OFFICE OF SECRETARY OF STATE,
New Orleans, April 12, 1875.

I hereby certify that the above and foregoing is a true copy of the "Agreement of Consolidation" between the New Orleans Gas Light Company, and the Crescent City Gas Light Company, with proceedings of the general meetings of the stockholders of the New Orleans Gas Light Company and the Crescent City Gas Light Company, held April 9, 1875, to ratify said agreement, filed in this office on the 10th day of this month.

Given under my hand and the seal of the State, this twelfth day of April, A. D. 1875, and of the Independence of the United States the ninety-ninth.

P. G. DESLONDE,
Secretary of State.

BY-LAWS

OF

The New Orleans Gas Light Company,

ADOPTED BY THE

BOARD OF DIRECTORS,

At their Meeting, November 16th, 1875.

CHAPTER I.

OF MEETINGS OF THE STOCKHOLDERS.

SECTION 1. A meeting of the stockholders shall be held annually on the second *Tuesday in January, between the hours of 10 A.M. and 2 P.M., at the office of the Company, for the election of seven Directors to serve during the ensuing year, and until their successors shall have been elected and qualified.

Annual meeting.

SEC. 2. Due notice of said meeting shall be given by advertisement for ten days, in two daily newspapers of the city of New Orleans; and if for any reason, the said election should not take place on the day fixed therefor, the meeting for this purpose shall be held on another day not more than ten days thereafter.

Ten days' notice to be given.

Postponement.

SEC. 3. Special meetings of the stockholders may be called by the Board of Directors, when necessary, of which ten days' notice shall also be given in two daily newspapers. The object of every such special meeting shall be clearly expressed in said notice; and no subject shall be considered at the meeting thus called, other than that stated in said notice.

Special meetings may be called.

Object must be stated in the call.

*Act No. 106, Section 1, 42.

CHAPTER II.

OF ELECTIONS FOR DIRECTORS.

Three Commissioners to be appointed.

SECTION 1. The annual election for Directors shall be held under the superintendence of three commissioners, stockholders of the Company, appointed by the outgoing Board of Directors, outside of their own body, at their regular meeting in December preceding the election. Written notice of their appointment shall be sent to the commissioners; and in case any of them shall neglect or refuse to serve, the President shall, in writing, appoint another in his place.

President may fill a vacancy.

Secretary to prepare a stock list

SEC. 2. The stock transfer books shall be closed one week before the election, and the Secretary shall make up, for the use of the commissioners, a correct list of all the stockholders, and of the number of shares held by each of them.

Every share entitled to one vote.

Owner of ten shares eligible as Director.

Ballot-box to be sealed.

SEC. 3. *The election shall be by ballot; each share of stock represented by the owner or his proxy shall be entitled to one vote; and the holder of ten shares, in his own name, is eligible as a Director. Upon each ballot presented, the commissioners shall mark plainly in ink, the number of shares to which the voter is entitled, as set down in the stock list furnished by the Secretary; and they shall deposit the same in a box previously emptied and sealed by them.

Candidates elected.

Duplicate certificates.

SEC. 4. The voting shall cease at 2 o'clock, P. M., and the commissioners shall immediately count the ballots. The seven persons voted for, who being eligible, shall have received the greatest number of votes, shall be declared elected Directors for the ensuing year; and the commissioners shall draw up in writing, duplicate certificates of said election over their signatures; stating the names of all candidates voted for, the number of votes received by each, and the total number of votes cast.

Result of election to be published.

SEC. 5. The result of said election shall be published for one week in two daily newspapers of this city, and the Secretary shall notify, in writing, each of the Directors

*Act No. 196, Section 1. Agreement of Consolidation, Art. 6.

Notice to Directors elect.

elect of his said election, and of the time and place when and where they shall meet together to organize themselves into a board.

CHAPTER III.

OF THE BOARD OF DIRECTORS.

SECTION 1. The general management, control and administration of the property and affairs of the Company is vested in the Board of Directors,* and shall be exercised at the office of the Company, in the city of New Orleans.

Functions of the Board

SEC. 2. There shall be seven Directors, four of whom shall constitute a quorum for the transaction of business.†

Quorum.

SEC. 3. On the second Tuesday in January, of each year, at the annual meeting for the election of Directors, the outgoing Board of Directors shall lay before the stockholders a statement of all the affairs and concerns of the Company for their information.‡

Statement of affairs.

SEC. 4. On the third Tuesday in January after said election, the outgoing Board of Directors shall hold their last regular meeting, and the Secretary shall read to the Board the certificate of election of the Directors elect, which shall be entered in the journal of said meeting.

Certificate of election to be recorded.

SEC. 5. On the first Monday in February, the Directors elect shall assemble at 12 o'clock, M., and organize by the election of a President and Vice President from their own body, and a Secretary and Treasurer either members or not of their own body.§

Annual election of officers.

SEC. 6. The President shall, as soon as said organization is effected, appoint a committee of three Directors, who shall examine the books and accounts of the company, and verify the cash and other assets. Said committee shall report, in writing, at the next regular meeting of the Board, or sooner at a special meeting, if necessary, the result of their examination, and said report shall be recorded in the journal.

Committee to examine accounts.

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*Agreement of Consolidation, Art. 6.
†Agreement of Consolidation, Art. 6.
‡Act No. 97, Section 7.
§Act No. 106 Section 1, ¶1.

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*Act No. 106, Section 1, Agreement of Consolidation, Art. 6.

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Committee to examine accounts.

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*Agreement of Consolidation, Art. 6.
†Agreement of Consolidation, Art. 6.
‡Act No. 97, Section 7.
§Act No. 106 Section 1, ¶1.

Regular meetings.

SEC. 7. The Board of Directors shall hold their regular meeting on the third Tuesday of every month, except when this day shall be a holiday; in which case the meeting shall take place on the following day. A journal of proceedings at all meetings shall be kept by the Secretary, or in his absence, by the Treasurer.

Special meetings.

SEC. 8. Special meetings of the Board may be called at any time by the President, or, in his absence, by the Vice President, whenever the interests of the Company may require them.

Order of Business.

SEC. 9. All meetings of the Board shall be governed as far as possible by the rules of "Jefferson's Manual;" and at every stated meeting the following order of business shall be observed:

1st. Reading and approving the minutes of former proceedings.

2d. Reports of General Superintendent and officers.

3d. Reports of Committees.

4th. Election to fill vacancies.

5th. Unfinished business.

6th. New business.

Vacancies, How filled.

SEC. 10. If any Director shall cease to be a stockholder, his office shall become vacant*; and when any vacancy shall occur in the Board, by death, resignation or otherwise, the remaining Directors shall, at the first ensuing regular meeting, elect a director from among the qualified stockholders, to fill the vacancy for the unexpired term.

Semi-annual dividends.

SEC. 11. The Board of Directors shall declare semi-annual dividends† at their regular meetings in June and December, of the nett earned profits of each half year, in accordance with Article 5 of the Agreement of Consolidation.

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* Act No. 97, Section 5.

† Act No. 97, Section 7.

CHAPTER IV.

OF THE OFFICERS OF THE COMPANY.

SECTION 1. The officers of the Company are declared to be :

Officers of the Company.

A President,
A Vice President,
A General Superintendent,
A Secretary,
A Treasurer,
A Manager of the Works,
An Auditor of the Works.

SEC. 2. The President, Vice President, Treasurer and Secretary shall be elected annually by the Board of Directors, as hereinbefore provided in Chapter III, §5.

Elective officers.

SEC. 3. All other officers shall be appointed by the Board, as vacancies occur, and shall hold their office during good behavior; but no officer shall be dismissed or appointed except by the affirmative vote of a majority of the whole number of Directors.

Other officers—how appointed.

SEC. 4. All officers and employees handling cash belonging to the Company, shall give such bonds for the faithful performance of their duties, as the Board of Directors may determine. But no Director, or officer, or employee of the Company shall be received as surety upon any bond so given.

Bonds and sureties.

SEC. 5. No debt or liability, beyond the necessary, legitimate business and current expenses of the Company, shall be contracted by the President or any other officer, without the consent of the Board of Directors, previously obtained at a regular meeting.

Officers not to contract debts.

SEC. 6. Neither the President, nor any other officer or employee of the Company shall be pecuniarily interested, directly or indirectly, in any supplies or materials purchased by the Company; nor shall they receive any brokerage, commissions, discounts or perquisites of any kind, on account of contracts or purchases made in its behalf.

No officers to be interested pecuniarily in any transaction for the Company.

CHAPTER V.

OF THE PRESIDENT AND VICE PRESIDENT.

To preside at all meetings.

SECTION 1. The President shall preside at all meetings of the Board of Directors, and shall be "ex-officio" a member of all its Committees.

Sign all instruments and contracts.

SEC. 2. He shall sign all certificates of stock, contracts, instruments or papers in writing, to which the seal of the Company is required to be affixed; and he shall countersign all checks, warrants, notes or drafts drawn by the Treasurer, and all bills, vouchers and pay rolls.

Make all purchases.

SEC. 3. He shall make or approve all purchases which are required for the Company, and shall exercise a general supervision over the business of the Company, and the conduct of its officers and employees.

Suspend officers.

SEC. 4. He shall suspend from duty any officer for neglect, incompetency, insubordination or intemperance, and shall report such suspension to the Board at its next regular meeting, for final action.

Duties of the Vice President.

SEC. 5. The Vice President, in the absence or during inability of the President, from illness or other cause, shall have the same powers and fulfil the same duties as the President.

CHAPTER VI.

OF THE GENERAL SUPERINTENDENT.

The executive officer.

SECTION 1. The General Superintendent shall be the executive officer of the Company, under the direction of the President, and shall exercise a daily supervision and control over every department of the Company's business.

SEC. 2. He shall have his office at the office of the Company, and shall visit the works daily.

He shall attend all meetings.

SEC. 3. He shall attend all meetings of the Board of Directors, and make regular monthly reports of the operations of the Company.

Seek improvements in manufacture.

SEC. 4. He shall inform himself by correspondence, experiment or otherwise, of the value of all new processes in the manufacture, purification or distribution of gas, the results of which information he shall from time to time communicate to the Board.

Examine and approve ad vouchers, etc.

SEC. 5. He shall examine all requisitions for materials or supplies, and all pay rolls, bills and vouchers; and affix to each of them his approval in writing, before they are submitted to the President.

Keep a diary

SEC. 6. He shall keep a daily journal, open to the inspection of the Directors, in which he shall enter abstracts or memoranda of important matters, contracts, agreements, etc.

Make annual reports

SEC. 7. At the annual meeting of the Board, on the first Monday in February, he shall lay before the Directors a full report of the operations of the Company during the year ending December 31st, with a statement of the condition of the works, and an estimate of income, expenditure and profits for the ensuing year, and such recommendations as he may think necessary. He shall also prepare statements of the operations of each half-year, which shall be submitted to the Board at their regular meetings in June and December.

Semi-annual statements.

CHAPTER VII.

OF THE SECRETARY.

Journal of proceedings

SECTION 1. The Secretary shall attend all meetings of the Board of Directors, and keep the journal of their proceedings. He shall issue all notices of meetings of the Board and of the stockholders.

List of officers and salaries.

SEC. 2. He shall prepare and lay before the Board, annually, at their first meeting in February, a list of all the officers, clerks and employees paid by the year, with their respective salaries.

Keep the books.

SEC. 3. He shall keep the general books of the Company, and the stock and transfer books, and shall be the custodian of the corporate seal of the Company.

Audit accounts.

SEC. 4. He shall countersign all certificates of stock, audit all accounts which do not come within the scope of the Auditor of the Works, and certify to their correctness.

Verify cash returns.

SEC. 5. He shall audit all returns made by the collectors and cash clerks, and verify the accounts of the Treasurer.

SEC. 6. He shall keep a register of employees in which shall be entered the name, residence, rate of wages, occupation, date of employment and discharge, and the standing of every workman and laborer employed by the Company.

Balance sheets.

SEC. 7. He shall make up monthly a trial balance sheet of the Ledger; a statement of profits, and an exhibit of unpaid bills in each collector's district.

Records.

SEC. 8. He shall keep records of the daily and monthly Station Reports, with such other statistical tables as may be from time to time prescribed by the General Superintendent.

Annual balance and statements.

SEC. 9. He shall close and balance the general books annually on the first of January, and make up a statement of the Income, Expenditure, and Profits of the year, together with a detailed Inventory of all the property, assets and liabilities of the Company.

CHAPTER VIII.

OF THE TREASURER.

Receive and disburse all funds.

SECTION 1. The Treasurer shall receive and disburse all moneys for account of the Company, and have charge of its valuable papers and securities.

Daily deposits.

SEC. 2. He shall deposit daily in such chartered bank or banks as the Board of Directors may select, all moneys received by him for account of the Company.

Payment by bank check.

SEC. 3. He shall make all payments (except when the amount is less than ten dollars,) by bank checks, which shall be countersigned by the President.

Petty bills.

SEC. 4. He shall pay in cash all bills less than ten dollars in amount, and every such payment shall be entered in detail in a Petty-bill book.

Receipts

SEC. 5. He shall take a receipt in writing in the Receipt Book of the Company, for each and every payment made by him.

To pay none but certified vouchers.

SEC. 6. He shall pay no bills, invoices, pay-rolls or any other claims against the Company, until they shall have been duly certified by the Auditor of the Works, or by the Secretary, according to the nature of the claim, and approved by the President and General Superintendent.

Daily cash abstract book.

SEC. 7. He shall keep an abstract book in which shall be daily entered an account of all receipts and disbursements, in order that the exact cash balance on hand may be daily ascertained.

Monthly statements.

SEC. 8. He shall make up, on the first of every month, a classified statement of receipts and disbursements, which shall be recorded in the Balance book of the Company.

CHAPTER IX.

OF THE MANAGER OF THE WORKS.

Manufacture etc., of gas.

SECTION 1. The Manager shall have charge of the manufacture, purification and delivery of the gas from the gas holders. He shall employ and control the labor necessary to operate the works, subject to the regulations hereinafter provided, and shall be responsible to the General Superintendent for the proper fulfilment of his duties.

SEC. 2. He shall reside at the works; and remain upon the premises during the day, and occasionally, during the night shift, so as to enforce constant efficiency in every department under his care.

SEC. 3. He shall confer daily with the General Superintendent upon all matters connected with the Station, and shall make monthly reports, in writing, of the condition of the works; and a general report, annually on the 1st of January, of his operations, with such suggestions as may seem proper to be made.

CHAPTER X.

OF THE AUDITOR OF THE WORKS.

Keep station book.

SECTION 1. The Auditor shall keep the books and records of the Station, and make up the weekly pay-rolls of the men employed at the works and in the streets.

Register of workmen.

SEC. 2. He shall keep a register in which shall be entered the names, residence, occupation, rate of wages and standing of every workman employed at the Station and in the streets, with the date of his employment and discharge; and no workman shall be included in any pay-roll, until his

name shall have been reported to the Auditor for entry in said register. All changes, whether by addition or discharge, in the number of men employed, shall be reported day by day to the Secretary.

All changes to be reported to the Secretary.

SEC. 3. He shall, in person, receive from the Treasurer the sum required for wages according to the pay-roll, and pay to each workman in person, or to his proper representative, the amount entered to his credit.

Pay rolls.

SEC. 4. He shall keep daily accounts of the consumption of coal, lime, etc.; the production and consumption of gas and deliveries of coke, a report of which shall be made to the Secretary.

Daily reports.

SEC. 5. He shall keep detailed accounts of all materials and supplies received and used at the Station and in the streets, a monthly report of which shall be made to the Secretary; and annually, on the 1st of January, he shall prepare a detailed inventory of all materials and supplies remaining on hand from actual inspection, and of all tools and implements in the hands of the several foremen.

Monthly reports.

Annual inventory.

SEC. 6. He shall make requisition in writing to the General Superintendent for all materials and supplies required for the works; and no purchase shall be made in the name of the Company until the requisition for the same shall have been approved by the General Superintendent.

Requisition for materials.

SEC. 7. He shall have charge of all materials and supplies in stock, and shall make no deliveries of same except upon a written requisition from the Manager, or other proper officer, and said requisition shall be dated and numbered, and entered in a book for convenient reference.

Deliveries of materials

SEC. 8. He shall audit and certify all bills, invoices and accounts relating to the Station, before transmitting them for approval to the General Superintendent.

Audit of accounts.

SEC. 9. He shall make no deliveries of Coke, Tar, or other products from the Works, except upon an order issued from the office of the Company; and no cash transactions of any kind shall be made at the Station, except the payment of wages above provided for.

Deliveries of coke, etc.

CHAPTER XI.

OF THE OTHER EMPLOYEES OF THE COMPANY.

SECTION 1. In addition to the officers mentioned in Chapter IV, Section 1, the regular employees shall be as follows:

(*a*). In the Financial Department:

One Deposit Clerk.
One Application Clerk.
One Cash Clerk.
One Coke Clerk.
One Bill Clerk.
One Assistant Clerk.
Five Collectors.

(*b*). In the Gas-distributing Department:

One Inspector of Mains, Services and Fittings.
One Inspector of Meters.

Tenure of office.

SEC. 2. These employees shall be appointed by the President with the consent of the Board of Directors, and shall hold their office during good behavior; but may be summarily discharged by the President for neglect, insubordination, intemperance or general inefficiency.

Duties of employees.

SEC. 3. The duties of said employees shall be prescribed by the General Superintendent, in a Code of Rules to be approved by the President, and printed for the use of employees; subject, however, to revision and amendment from time to time as the exigencies of business may require.

Embezzlement.

SEC. 4. Any officer or employee of the Company, handling its funds, who shall embezzle or wrongfully appropriate any said funds, shall be prosecuted in a criminal suit.

Office hours.

SEC. 5. The office hours of the Company for business with the public shall be from 9 A.M. to 3 P.M., and from 5 to 7 P.M., except upon legal holidays, when the office shall be closed at 12 o'clock, M. All officers and employees, however, shall devote such additional time as may be necessary to the completion of the daily business; and all books shall be regularly posted day by day.

CHAPTER XII.

OF SALARIES AND PENSIONS.

SECTION 1. The salaries of all officers and employees shall be fixed by the Board of Directors, and shall be subject to revision, annually, at the first meeting in February.

SEC. 2. All salaries and pensions shall be paid by the Treasurer, on the last day of every month; and no officer or employee, paid by the month, shall draw any portion of his current salary before the regular date of payment.

CHAPTER XIII.

OF DIVIDENDS.

SECTION 1. All dividends shall be payable January 15th, and July 15th, at the office of the Company in the city of New Orleans, or with current exchange, at such bank in the city of New York as the Board of Directors shall appoint, and it shall be optional with any stockholder to receive his dividends at either place.

SEC. 2. All stockholders electing to receive their dividends in the city of New York, shall notify the Secretary of the Company, in writing, of such decision, not less than thirty days before the date of payment of the next dividend; and shall register their names, with the number of shares of stock held by them, and the date and number of their certificate at the bank aforesaid, in the city of New York; and each stockholder, whenever presenting himself, in person or by an attorney, to receive a dividend, shall exhibit the said certificate of stock, and otherwise identify himself to the satisfaction of said bank.

SEC. 3. Any stockholder, registered in New York, who shall neglect to claim and receive a dividend within six months after the regular date of payment, shall lose his option of receiving said unclaimed dividend in New York, and must thereafter receive payment of same, at the office of the Company, in New Orleans.

CHAPTER XIV.

OF TRANSFERS OF STOCK.

SECTION 1. All blank certificates of stock of the Company, shall be bound in a book and numbered, and each certificate shall have a margin which shall remain in said book when the certificate is issued, and on which shall be entered by the Secretary, (1) the number and date of each certificate issued; (2) the name of the person to whom; (3) the number of shares for which it is issued, and (4) the page in the Stock Ledger where posted; and a receipt for said certificate, which shall be signed by the person to whom it is issued when he or she receives it.

SEC. 2. All certificates of stock shall be signed by the President and countersigned by the Secretary, and shall have the seal of the Company impressed upon them.

SEC. 3. No transfer of stock shall be made, unless the certificate therefor previously issued shall have been surrendered to the Company, with the word "CANCELLED" written across its face, and signed and dated by the person surrendering the same; and no transfer of stock shall be valid unless made upon the books of the Company by the person owning said stock, or by his, her or their legally constituted attorney, or in case of death, by their legal representatives.

SEC. 4. All powers of attorney, or probate powers to transfer stock, must be filed with the Secretary, either in the original or in the form of a certified copy.

SEC. 5. No new certificate of stock shall be issued in the place of any certificate claimed to be lost or destroyed, unless proof shall be made by affidavit, and a notice of such loss or destruction shall have been published for six weeks in one of the daily newspapers of the City of New Orleans, requiring all persons to show cause why a new certificate should not be issued; and unless a bond, satisfactory to the President, shall be given to indemnify the Company against all loss or damage by reason of the issue of a new certificate.

SEC. 6. Every certificate of stock issued in place of one alleged to be lost or destroyed, shall bear the same date and number as the one originally issued, and have legibly written across its face, that it is issued in the place of a certificate of the same date and number, which is alleged to be lost or destroyed.

CHAPTER XV.

OF BY-LAWS, RULES AND REGULATIONS.

SECTION 1. The foregoing By-Laws are established for the government of the Company, as provided in the Charter and Articles of Consolidation,* and all officers and employees are expected to comply with them.

SEC. 2. They may be amended or modified by the Board of Directors; but any amendment or alteration must be proposed at a regular meeting, to be acted upon finally at the next regular meeting, and shall be adopted only upon the affirmative vote of the majority of all the Directors.

SEC. 3. The General Superintendent shall establish a system of Rules and Regulations to be approved by the Board of Directors, defining the practice of the Company in its relations with gas-fitters and consumers, with regard to extensions of mains, service pipes, meter-setting, and the inspection of meters and fittings.

* Act No. 97, Section 7. Agreement of Consolidation, Art. 6.

115-674

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~883~~. 539

THE NEW ORLEANS WATER WORKS COMPANY, APPELLANT,

vs.

ROBERT C. RIVERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISANA.

FILED JUNE 21, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 883.

THE NEW ORLEANS WATER WORKS COMPANY, APPELLANT,

vs.

ROBERT C. RIVERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON

1 *Bill of Complaint. Filed April 28th*, 1884.

Circuit Court of the States, Fifth Circuit and Eastern District of Louisiana. No. 10560.

UNITED STATES OF AMERICA:

NEW ORLEANS WATER WORKS COMPANY
versus
ROBERT E. RIVERS.

The honorable the judges of the circuit court of the United States in and for the fifth judicial circuit and eastern district of Louisiana:

The New Orleans Water Works Company, a corporation duly created under and by virtue of the laws of the State of Louisiana, and domiciled in the parish of Orleans, in said State, brings this its bill of complaint against Robert E. Rivers, also a citizen of the State of Louisiana, residing within this district.

1. And, therefore, your orator shows unto your honors that the the Legislature of the State of Louisiana, by an act thereof, approved on the first day of April, A. D. 1883, created and established
2 a corporation called the Commercial Bank of New Orleans; that the chief object and purpose of said organized corporation was to convey water and water supply into the city of New Orleans and its fouhourgs, and into the houses of the inhabitants thereof, and to accomplish and effect a public water supply for the inhabitants of said city; that in and by said act of the Legislature aforesaid it was enacted that the said Commercial Bank of New Orleans, should have a capital stock of three millions of dollars, to be subscribed for as provided for in the said act, and that the said corporation should erect and establish a system of public water-works in the city of New Orleans adequate to a sufficient water supply for said city and the inhabitants thereof, as provided in said act. It was also enacted therein that said Commercial Bank of New Orleans should have and possess the exclusive privilege of furnishing said water supply, erecting said works, and laying pipes and mains for said supply from and after the passage of said act, the water to be
3 taken or drawn from the Mississippi river by means of pipes or conduits, and said corporation was vested with power to lay down pipes and erect the works necessary to effect said purpose, subject to the restrictions and the conditions contained in said act of the Legislature; and it was in said act further provided that if at and for a time after the expiration of thirty-five years from the date of the passage of said act, the corporation of the city of New Orleans should so elect, the said corporation, the city of New Orleans was authorized to purchase from said Commercial Bank of New Orleans the water-works so had and so constructed by the said company, together with all the rights and franchises pertaining to the same, including said exclusive right aforesaid; that it was further provided in said act of Legislature that in the event the said city of New Orleans, after the expiration of said thirty-five years, should elect to purchase said water works from the said Commercial Bank of New Orleans, the

price to be paid therefor by the city of New Orleans should
4 be fixed by arbitration as provided in said act, and the amount so fixed should be payable to the said Commercial Bank of New Orleans in the bonds of the mayor, alderman, and inhabitants of the city of New Orleans, bearing interest at the rate of five per cent. per annum, payable semi-annually, and redeemable in not less than ten years nor more than thirty years from the date on which the said award should be signed, and the said water works, its machinery, pipes, and plant, delivered over to the said city of New Orleans, as more fully and at large appears by said public act of the Legislature of said State, to which your orator at all times refers.

2. And your orator further shows unto your honors that after the passage and adoption of the said act of the Legislature, the capital stock required, as provided in said act, was duly subscribed, and said company was organized and accepted the terms of the said act of Legislature, and constructed an elaborate system of water-
5 works in the city of New Orleans, as provided, directed, and required by the said act of Legislature, and continued to own, manage, control, and operate the same for the full period of thirty-five years from and after the adoption of said act of Legislature, and during the entire period aforesaid had and possessed under and by virtue of the terms of said grant, an act of Legislature including the right and privilege of managing and operating the said public water-works for providing the supply of water to the city of New Orleans, and the inhabitants hereof.

3. And your orator further shows unto your honors that at the expiration of the said period of thirty-five years, the corporation of the city of New Orleans elected to take advantage of the provisions of said act wherein and whereby it was permitted to purchase said rights of the said Commercial Bank of New Orleans in said water works and relating thereto; that appraisers were duly appointed, and the valuation of the property arrived at, as required in said act, and was by arbitration established at the sum of two
6 million dollars; that at that time, as organized under said act of Legislature, the city of New Orleans was a large shareholder in the said Commercial Bank of New Orleans, and in order to pay for said water works, acquired the interest of the other shareholders therein by purchase, and to that end issued and delivered to the said Commercial Bank of New Orleans the bonds of the city of New Orleans in due form, duly issued, as provided in said act of Legislature, in the sum of one million three hundred and ninety-three thousand and four hundred dollars ($1,393,400), for the appraised and estimated value of the interest in said Commercial Bank and water works not at that time owned by the city of New Orleans, and represented by the shares of stock in said corporation standing in her name; that said bonds were made redeemable in forty years from the date thereof, and bore five per cent. interest per annum, payable semi-annually; that said bonds
7 are commonly known as the water works bonds; whereupon the said Commercial Bank of the City of New Orleans, as required by said act of Legislature, conveyed and transferred to the

city of New Orleans full, absolute, and complete title in and to said water-works, and of all rights, privileges, and immunities which were possessed by said Commercial Bank of New Orleans, whereby the city of New Orleans became and was vested with the exclusive right and privilege of furnishing water, by a system of public water works, to the public and inhabitants of said city of New Orleans; that said right was an exclusive right, without limit as to time, and, in the language of the said act, was to continue "forever."

4. And your orator further shows unto your honors that having so become possessed of the said water works by the title aforesaid, the said city of New Orleans, as a corporation, managed, conducted, and held exacting pay from those receiving water supply
8 therefrom until on or about the month of February, A. D. 1878, as hereinafter set forth.

5. And your orator further shows unto your honors that during the period of time which the said city of New Orleans owned and operated the said water works said corporation was much embarrassed in its finances, and was largely in debt; that it was with extreme difficulty that the said corporation could meet and pay the annual demands of interest on said bonds and its other current expenses; that in the year A. D. 1877, in order to relieve the said city of New Orleans in a measure from its financial embarrassment, growing out of its indebtedness, the Legislature of Louisiana, at an extra session of the Legislature thereof held in 1877, passed and adopted act No. 33 of the acts of said extra session, entitled "An act to enable the city of New Orleans to promote the public health and to afford greater security against fire by the establishment of a corporation to be called the New Orleans Water Works Company (the same being your orator), to authorize the said company to
9 issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of the city of New Orleans an adequate supply of pure and wholesome water, and to permit holders of the water-works bonds to convert them into stock, and provide for the liquidation of the bonded and floating debt of the city of New Orleans, etc.," to which said act, as published by authority in the public statutes of the said State, your orator at all times refers, and makes the same a part of his bill of complaint to the same extent and effect as if written herein in *extenso*.

And your orator further shows unto your honors that it was provided in said act that a corporation be created, to be known as the New Orleans Water Works Company, and provided amongst other things that the holders of the said water works bonds might convert the same into the capital stock of the said company, and that when so converted the said bonds should be surrendered and can-
10 celled; that there should be issued to the city of New Orleans stock amounting to six hundred and six thousand and six hundred dollars ($606,600), full paid shares of stock in said company of one hundred dollars each, besides one additional share of stock for every one hundred thousand dollars of the said water works bonds, which she had redeemed and possessed herself of prior to the time of the organization of said company, whether taken up

either by payments, funding into premium bonds, or other securities, or otherwise; and that for the purpose of carrying out the provisions of said act, all the certificates of all the stock in said company should be issued to the said city of New Orleans, one set of said certificates equal in value and amount to the then outstanding par value amount of the said water works bonds then held by the said city to be exchanged for the said bonds with the holders thereof;

11 the other set of certificates being held by the said city of New Orleans in her own right and in trust for the holders of all other bonds and floating indebtedness of every kind and nature who might desire to avail themselves thereof in the manner hereinafter set forth. And it was also further provided in said act that said water works company should be organized by the mayor of the city of New Orleans, giving thirty days' notice that he would receive the subscription of bondholders who might agree to exchange the said bonds for the stock in said water works company, and that the city should subscribe for said stock to the amount of six hundred and six thousand and six hundred dollars ($606,600), and such other amount as should be equal in par value to any of the said water works bonds, which should have been extinguished by the said city of New Orleans by exchange, payment, or otherwise, and that as soon as

12 the sum of *of* five hundred thousand dollars in addition to said subscription to be made by the city, should have been made and the amount of bonds represented thereby and exchanged therefor, should have been surrendered and cancelled by the *by the* administrator of finance, the said subscribers should assemble on a day to be named by the mayor of the city of New Orleans, and elect a board of directors, to be composed of seven persons, of whom the mayor was designated as one, and that of the remaining directors four should be designated by the mayor by appointment, and three to be elected by the subscribers, other than the said city of New Orleans, to be selected from amongst the subscribers, and that the directors thus designated and elected should constitute the first board of directors of the said company.

7. And your orators further shows unto your honors that the city

13 of New Orleans accepted the conditions and provisions of the said act of Legislature and subscribed for the full amount of said shares of stock to be subscribed for by the said city, and that the holders of the said water-works' bonds subscribed also to the said capital stock of the said company in a sum exceeding five hundred thousand dollars, and as required, surrendered their bonds, being the water-works' bonds aforesaid, to the administrator of finance, on or about the tenth day of March, A. D. 1878, which said bonds so subscribed and surrendered as aforesaid were by said administrator of finance of the city of New Orleans duly cancelled and extinguished, leaving to the subscribers who had surrendered the same, only their stock subscription, and the stock represented thereby, in lieu and place of the bonds so subscribed and surrendered by them; that immediately thereafter, during the said month of March, 1878, the said company was duly organized, and upon due and

proper notice and proceedings had, a board of directors,
14 as provided for in said act of Legislature, duly appointed and elected, as provided for in said act; that when said company was organized as aforesaid, it at once agreed to and accepted all of the conditions of the said act of Legislature as originally adopted by the said Legislature, and as amended by an act entitled "An act relative to the charter of the New Orleans Water Works Company, and amending act No. 33 of the extra session of 1877, approved March 31, 1877," which said last-mentioned act was approved on the 26th day of February, A. D. 1878, whereby your orator became and was vested with corporate character and existence, and vested with all the rights and privileges granted under said act No. 33 of the extra session of 1877, and the said act amendatory thereof; and the said city of New Orleans having also as aforesaid accepted the terms and conditions of the said act, did, as provided for in the said act, immediately after the appointment and election of
15 the said board of directors as aforesaid, in and by notarial act in due form, transfer, set over, and grant unto your orator all of its rights, title, and interest in and to said water works as it had acquired the same from the said Commercial Bank of New Orleans, and all subsequent additions thereto, together with its exclusive right and privilege to procede and furnish the public water supply of the city of New Orleans acquired from said Commercial Bank, which said notarial act, or a copy thereof, duly attested, your orator has now here in court ready to submit to the court as the court shall direct.

8. And your orator further shows unto your honors that in and by said act of conveyance, assignment, and transfer of said water works, and the rights thereto pertaining, so made and conveyed to your orator as aforesaid by the city of New Orleans, the said city of New Orleans, as grantor therein in said transfer, conveyed the
16 same to your orator, with full and explicit warranty in all particulars.

And your orator further shows unto your honors that, by reason of the premises, your orator became and was vested with full, absolute, and complete title to all the said water-works and to all privileges acquired by the said city of New Orleans from the said Commercial Bank of New Orleans as aforesaid, and all the rights, privileges, and property of the said city of New Orleans in and to said water-works as the said city possessed and held the same prior to said last-mentioned alienation and transfer, and has had the exclusive right of supplying said city of New Orleans and its inhabitants from the Mississippi river or any other stream or rivers by means of pipes or conduits, and the right of erecting and constructing all necessary works, engines, and machinery for that purpose for the full period of fifty years from and after the said thirty-first day of March, A. D. 1877, the date of said transfer of said water-works to your orator.

17 9. And your orator further shows unto your honors that, among the other rights granted and conferred upon your orator by said act of Legislature was the right and power to increase

the capital stock of said corporation, and particularly to borrow money for the purpose of improving and enlarging said works and increasing the supply of water to be furnished the said city of New Orleans; that the entire capital stock of said corporation having been made up and purchased with the obligations of the city of New Orleans so delivered to said city of New Orleans in payment of said subscription, there was left to your orator no found or capital stock in its treasury wherewith to pay and discharge the expense necessarily involved in extending, repairing, and operating said system of public water supply; that in order to accomplish this end your orator was authorized to issue bonds of the company to an amount not exceeding two millions of dollars, in such sums and at such times,
18 and bearing such rate of interest as the board of directors of your orator might determine, or deem most expedient to accomplish said end; and your orator was authorized to secure the payment of the said bonds, principal and interest, by a mortgage bearing in all the property and franchises of said New Orleans Water Works Company, including its franchise, to be a corporation, and its right to the exclusive water supply of said city, and all of the property possessed and held, owned or acquired, by your orator, subject to the condition that no such bond or mortgage shall be given or issued without the consent of the counsel of the city of New Orleans, and that the said bonds should not be sold or disposed of except upon such terms as shall be approved of [by] said counsel or legislative body of the city of New Orleans.

10. And your orator further shows unto your honors, that in order to render said works adequate to sufficiently supply the
19 said inhabitants of said city with water, and to repair the same, and to extend the works and renew old and decayed pipes and replace the same, and to extend the facilities of your orator for supplying water to said city, and in order to fully carry out the obligations and conditions bearing upon it in the said act of incorporation under which your orator has its existence, it became and was immediately necessary to expend large sums of money, which your orator was compelled necessarily to raise or procure by loans, and that your orator, by and with the consent of the city of New Orleans, has made and issued five hundred thousand dollars of bonds of said company, and has disposed of over three hundred thousand of that amount, and has realized the money therefrom; that all this was done by and with the consent of the city of New Orleans and the council and legislative department thereof, and that your orator has expended the said money, or a large portion thereof, in
20 increasing, improving, and enlarging the said water works in order to render the same adequate to supply the demand for water, and to carry out and observe the provisions and requirements of the said act of Legislature incorporating your orator; that to secure the payment of the said bonds your orator has also, by and with the consent of the said city of New Orleans, as provided in said act, made and executed in due form a mortgage bearing upon and including all of the property of your orator, and its franchise as a corporation, and that the said mortgage has been duly recorded, and is now in full force and effect.

11. And your orator further shows unto your honors that among other rights conferred upon your orator is the right to fix charges for water within the limits of the city of New Orleans, limited only by the provision that the net profits of the company from that source shall not exceed ten per cent. per annum upon the capital stock thereof.

21 12. And your orator further shows unto your honors that your orator, the said New Orleans Water Works Company, has in all things acted in good faith; that it accepted the terms and conditions of said act of Legislature only after having obtained the full consent of the city of New Orleans thereto and by and with the full assent of the city of New Orleans as hereinbefore set forth, and that had your orator not supposed that your orator had thereby acquired and obtained the full and exclusive right and privilege of supplying the city of New Orleans with water by a system of public water works, to the exclusion of all other means and sources of supply, through pipes or conduits brought into the said city, your orator would never have entered into said engagement and would not, nor would the subscribers thereto, have accepted the terms and conditions of said act, and surrendered and given up to the

22 city of New Orleans for cancellations, the said water works, bonds, and obligations of the said city of New Orleans, so by said subscribers and shareholders given to the said city of New Orleans in exchange for their said shares of said water works stock.

13. And your orator further shows unto your honors that the only exception contained in said act incorporating your orator, wherein and whereby your orator was not entitled and authorized to furnish the entire public public water supply brought into the said city of New Orleans in pipes and conduits, was the reservation made in favor of those persons in the said city of New Orleans who owned and occupied property contiguous to the Mississipi river, which said persons are by the reservation contained in the eighteenth section of said act of 1877 affected thereby, the said section providing that nothing in said act shall be construed so as to prevent the said coun-

23 cil from granting to any person or persons contiguous to the river the privilege of laying pipes to the river exclusively for his own or their own use. And your orator saith that in and by said reservation it was only intended to leave in the power of the council of the city of New Orleans so much power as would permit them to grant the right of laying pipes to the river, as set out in said section, only to such persons as owned and occupied property immediately on the bank of the river, with riparian rights reaching to the river, and was not intended, nor can the same be lawfully constructed as giving or reserving the power of the council of the city of New Orleans to grant the right to lay down such pipes to any person, or persons occupying or owning property or premises not so situated.

14. And your orator further shows unto your honors that it would have been unable to place or negotiate the

24 said bonds or borrow the said money nor would the shareholders in said company have ever yielded up or surrendered the obligations of the city of New Orleans by their

exchange for said property in said water-works and shares in said company, if they had not believed and been advised that they acquired the exclusive right so granted your orator, and that if such had not been the popular belief in the money market, your orator, the subscribers to this capital stock of said company, would never have been able to comply with or carry out the provisions of said act of incorporation; and that if the shareholders and subscribers to the capital stock of the complainant corporation had for one moment believed that the city of New Orleans could lawfully claim, or in good conscience exercise, under the provisions of said section eighteen of the said act of incorporation, any right or power to grant to any persons the right or privilege of laying pipes to
25 the river and obtaining their water supply therefrom, except as provided on the face of said section eighteen, where the property actually touched or ran down to the waters of the Mississippi river, your orator would never have exchanged the obligations of said city for said water-works property or stock, and would in all things have been unable to have borrowed the money or secured the means to extend said water-works and enlarge the same, and comply with the provisions of said act under which your orator is incorporated and acquired said works. And your orator files herewith a copy of the said act of Legislature incorporating said complainant, with all the amendments thereto, and makes the same a part of this bill of complaint.

15. And your orator further shows unto your honors that the said city of New Orleans, having received for the purch*ch*ase
26 price of said water works, and of the rights acquired by said city from the said Commercial Bank of New Orleans, the full value thereof in its own obligations, otherwise payable in cash at the maturity thereof, and having received also the said shares of the capital stock of the complainant's corporation, without having paid any cash consideration therefor; and the said shares of stock so delivered to the said city of New Orleans, being by law stamped with a special property value and character in the hands of the city of New Orleans, whereby the said city of New Orleans was and is enable- to, and has exchanged the same at the par value of one hundred dollars per share for other obligations, constituting the bonded and floating debt of the city of New Orleans to the full face value of said
27 shares, and being so situated, not only as the warrantor to your orator of the character, quality, and extent of said property so conveyed, but also holding such relations to your orator, that even after she shall have parted with the last share of the stock so delivered to the said city of New Orleans, and shall have parted with her entire interest in said corporation as a shareholder, yet, by the terms of said act, your orator is compelled as a corporation to concede to the said city of New Orleans the said number of directors charged with the management of the affairs of your orator, to be nominated, appointed, and designated by the said city of New Orleans, and when so appointed and designated in a number sufficient to control the acts of the said board of directors, and to put itself in the position of assuming to control, and to actually control, the property and opera-

tions of said company, without in fact possessing, holding,
28 or representing a single share of the capital stock thereof, was bound in law, equity, and good conscience to observe full faith in all of its said obligations, and bound to abide by a strict and equitable construction thereof; and to in all things in conscience and care avoid the perpetration of any wrong or injustice which should impair the property of your orator, or the shareholders therein, or throw or cast any cloud upon the property, rights, and franchises so conveyed to your orator for a valuable consideration, in all things fully equal to the actual money value thereof; and show warrant and defend your orator in the full and complete exercise of all said rights, privilege, and enjoyment of the property so conveyed to your orator as aforesaid.

16. And your orator further shows unto your honors that the said city of New Orleans did, with reasonable good faith, execute and carry out her said duties and obligations as aforesaid until the adoption of the constitution of the State of Louisiana, commonly known as the constitution of 1879; that by virtue of the provisions
29 of section ten of article one of the Constitution of the United States, and by reason of the premises and of the peculiar relation of the said city of New Orleans to your orator, and the conditions and circumstances under which your orator acquired from the city of New Orleans the said rights in said water-works, your orator was protected by the said Constitution of the United States from any impairment or breach of the said obligations of the State of Louisiana, either as a State, or the said city of New Orleans as a municipal government charged with the control or management-management of the local affairs of the city of New Orleans, and has the right to demand, in all respects and particulars, a full and complete observance of said contract and obligation, both by the State of Louisiana and the said city of New Orleans, and is entitled to the aid of this honorable court in the protection thereof, and claims the rights guaranteed to it in that respect and behalf by the Constitution and laws of the United States.

17. And your orator further shows unto your honors that
30 immediately—the adoption and promulgation of the said constitution of the State of Louisiana, known as the constitution of 1879, the said council of the city of New Orleans, in bad faith, and with intent to injure and wrong your orator, and to destroy the value of the property so conveyed by the said city to your orator, and to disregard, ignore, and render of no avail their said warranty of title and right to said water-works and franchises to your orator, cast about for some excuse for bad faith and a disregard of its said obligation of warranty, and immediately asserted, and now asserts and pretends, that certain provisions in the said constitution of the State of Louisiana adopted in 1879, although adopted long after all of the matters hereinbefore set forth had become accomplished facts, and the rights of your orator in said property had vested, have the effect to absolutely destroy and cut off all the rights of your orator to furnish and provide a public water supply for the city of New Orleans, to the exclusion of all other persons, but also pretend

and assert that by reason of the provisions contained in said
31 constitution said city is absolved from all of its obligations so entered into, and is at liberty to levy war upon your orator and undermine and destroy its property, unrestrained by any rule of law, by any equity or good conscience, and now claims and pretends that the said city of New Orleans, through its counsel, has the right and can lawfully grant to any person occupying any premises in the city of New Orleans not contiguous to the Mississippi river or its banks the right to lay down and construct for themselves pipes, conduits, and mains running from the Mississippi river to any lot, block, or establishment in any part of the city of New Orleans, and thereby take away from your orator the right of your orator to furnish said supply, and receive pay and consideration therefor.

18. And your orator further shows unto your honors that the hotel called the St. Charles Hotel is the largest public hotel in the city of New Orleans, and is a very large establishment, with rooms and accommodation sufficient and adequate to lodge and ac-
32 commodate a very large number of guests, and that as a hotel is now dependent for its water supply upon the public water-works of your orator; that said hotel has been established for a large number of years, and is a permanent institution, and will in all probability continue in existence and be operated as a hotel during the whole period and lifetime of the exclusive grant of your orator to furnish and provide the water supply; that the consumption of water in said hotel by the occupants thereof is very large, and that your orator has heretofore derived a large profit from the exercise of its right to supply said water for consumption in said hotel, and has supplied the same in the past at a profit largely exceeding the sum of five thousand dollars, which profit has accrued to your orator since the date of its organization and the commencement of its corporate life, as aforesaid.

19. And your orator further shows unto your honors that said said St. Charles Hotel is not situated contiguous to the waters of the Mississippi river or the banks thereof, nor does the property
33 upon which the same is erected extend to the Mississippi river; but on the contrary thereof, the same is situated in the middle of the city, and that six or seven blocks and streets intervene and lie between said hotel and the nearest point on the bank of the Mississippi river, and that none of said intervening property is owned or occupied by the lessee of the said hotel or by the owners of said hotel; that said defendant, Robert E. Rivers, is the lessee of said hotel, and operates the same, and has the right to operate said hotel for a long series of years in the future, the exact length of said term is to your orator unknown.

20. And your orator further shows unto your honors that on or about the fifteenth day of November, 1882, the council of the city of New Orleans, intending thereby to injure, wrong, and defraud your orator, and to in all things disregard their solemn obligation to your orator and their said contract, as aforesaid, and to defy the Constitution and laws of the United States, and to utterly
34 disregard your orator's rights in the premises, did, through

the council of the said city of New Orleans, make, adopt, pass, and promulgate a public ordinance of the said city of New Orleans, in the words and figures following:

MAYORALTY OF NEW ORLEANS,
CITY HALL, *November* 16, 1882.

No. 8148. Administration Series.

Be it ordained by the common council of the city of New Orleans, That Robert E. Rivers, or the lessee of the St. Charles Hotel, of the city of New Orleans, be allowed the right of way and privilege to lay a water pipe from the Mississippi river at any point opposite to the head of Common or Gravier streets, through either of those streets to said hotel, its fronts and side streets, with all needed attachments and appurtenances, and to distribute said water through said hotel as said R. E. Rivers, or lessee, may desire from said pipes, the pipes to be put at a depth of *three* feet under the surface of the said streets, to be of iron, and of not more than (——) inches in diameter.

35 Be it ordained, That the said pipes and all attachments thereto in said streets be arranged and placed under the supervision and approval of the city surveyor.

The pavement and streets to be relaid to the satisfaction of the administrator of improvements and city surveyor.

Adopted by the council of the city of New Orleans November 15, 1882.

Yeas—Fitzpatrick, Fagan, Mealey, and Walshe.

(Signed) JOS. A. SHAKSPEARE, *Mayor.*
(Signed) M. McNAMARA, *Secretary.*

That the said city of New Orleans and said defendant alleges and pretends that the city has the lawful right to disregard its obligations and commit and effect said breach of good conscience and of its contract of warranty, and its obligation growing out of the premises, for and by reason of the provisions contained in the constitution of the State of Louisiana as adopted in the year 1879, and particularly the 258th article thereof, and claims and pretends that
36 by reason of the said provision and enactments in the said State constitution, that the said city is absolutely absolved from all the observances of the terms and conditions of its contract obligations, and all obligations which in equity and good conscience are improved upon, and should be observed by said city of New Orleans by reason of the premises; and that the said defendant joins with the said city of New Orleans in asserting the said alleged right of the city of New Orleans to disregard its said obligation, the Constitution and laws of the United States, and to practically confiscate in the hands of the said shareholders of said water-works company their property therein acquired by them in an honest exchange of the existing debts and obligations of the city of New Orleans, which, but for the act of said shareholders in exchanging said bonds and obligations for said shares in said water works company, the said

city of New Orleans would have been compelled to pay said obligations, with the interest thereon, in money.

37 21. And your orator further shows unto your honors that it is advised, informed, and believes that the said complainant as in law, in equity and good conscience ought to be protected from any such wrong and fraudulent acts by the provisions of the Constitution of the United States, and the settled adjudications of the Supreme Court of the United States construing and applying said provisions of the Federal Constitution.

22. And your orator further shows unto your honors that the said defendants is about taking steps to avail himself of the said pretended grant contained in said ordinance, and is about to construct and lay, or cause to be laid, from the Mississippi river to said St. Charles hotel one or more large water pipes, extending along or throug- the streets of the said city of New Orleans, the distance of six or seven blocks back from the river, and establish a machine and device for forcing or pumping through said pipes the entire supply of water used and required

38 for all purposes in said St. Charles Hotel; and that the said St. Charles Hotel is a very large establishment, and entertains a large number of patrons and guests, and has capacity for entertaining and providing for a very large number of persons; that the consumption of water in said hotel is very large, and the demand therefor will continue so long as the said hotel is continued and exists as a hotel, which will be for a long series of years in the future; that at the present time the said hotel and the lessee thereof, on whom devolves the expense of furnishing and providing said water, has no other source of obtaining the same excepting from and through the pipes, conduits, and by the machinery of your orator; that for a long period of time in the past your orator so supplied said hotel and the lessee thereof, with considerable profit to itself, amounting to much more than the sum of five thousand dollars, and that unless in-

39 terfered with by the establishment and laying of said pipes and mains by the lessee thereof, the said defendant, as threatened, must necessarily continue to supply said hotel and the lessee thereof with the water supply necessary to operate the same, and that the said right and privilege and franchise of supplying the said water to said hotel during the lifetime of the charter of your orator, and during the period which it is lawfully entitled to said right by the terms of the said act of the Legislature of this State, will far exceed in profit to your orator the sum of five thousand dollars; that if said defendant is permitted [to] construct and lay said pipes to the Mississippi river, and obtain through the same the supply of water necessary to operate said hotel and carry on the same, your orator will be entirely cut off from any revenue therefrom or source of profit from such supply, and that the damage and loss resulting

40 directly therefrom to your orator will far exceed the sum of ten thousand dollars, and more than five thousand dollars thereof will occur and be suffered by your orator before this action in its ordinary course can be terminated by final judgment and decree.

23. And your orator further shows unto your honors that the surrender of the said obligations of the city of New Orleans, and its exchange thereof into and for the shares of stock in said New Orleans Water-Works Company, subject to the conditions of said charter, has been far from profitable to the shareholders of said company; that the market value of said shares is not at par, and that your orator has never earned or divided among its shareholders a sum equal to ten per cent. on the amount of said shares, or of the cost of said water-works to the shareholders and to your orator, and has little prospect, from present indications, of being able to so declare
41 or make a dividend equal to ten per cent. on the capital stock of said company during the existence of its charter rights; that if the said pretended grant of the city of New Orleans to private parties and corporations of the right to lay down pipes and mains from property not contiguous or lying immediately on the river, and draw through said pipes their supply of water without reference to the rights of your orator, is held to be valid and lawful, your orator's rights and property in said water-works will become particularly confiscated and of no value, and the shareholders in said company will have received practically no value whatsoever for the said obligations of the said city of New Orleans so surrendered and exchanged by them for said property. And your orator avers that the said act of the city of New Orleans is a fraud upon the rights of your orator, and that the said defendant at all times had full knowledge
42 of the rights of your orator in the premises, and that the said act of the city of New Orleans was fraudulent and in bad faith and contrary to law; yet, unless restrained by the order, injunction, and decree of this honorable court, the said defendant will at once avail himself of his pretended right, so pretended to have been granted by the city of New Orleans, and will construct, lay down, use, and operate said pipe or pipes to procure the entire supply of water consumed in said hotel, and that said pipes, if properly constructed, will endure and be of use and effective for said supply during the period of the lifetime now remaining to your orator as a corporation, and cause your orator continual and continuing pecuniary loss and injury during the whole of said period.

24. That your orator is remediless in the premises in a court of law, and therefore applies and appeals to this honorable court sit-
43 ting in equity, and leaving peculiar and full powers in this behalf, and jurisdiction in the premises by virtue of the premises, and the Constitution and laws of the United States; all of said actings and doings of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises.

Therefore, to the end that the said defendant, if he can show why your orator should not have the relief hereby prayed for, your orator prays that said defendant, according to the best of his several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the premises, (the oath to said defendant to such answer being hereby waived); and after due proceedings had, may it please your honors to grant unto

your orator a writ of injunction, both provisional and perpetual, enjoining the said defendant, his agents, servants, and attorneys,
44 and all manner of persons associated with him in the conduct, management, and operation of the said St. Charles hotel, that they desist and refrain from laying, constructing, making, or causing to be laid, constructed, made, or established, any pipe or pipes, conduits or mains from any point of the Mississippi river to the said St. Charles Hotel or the premises in which the same are situated, for the purpose or to the end that the supply of water for said hotel or any water for that purpose may be led, pumped, forced, or drawn through said pipe or pipes for use in said hotel or on some premises, or from availing themselves of any of the provisions, conditions, pretended grants, authority herein set out or contained in said alleged ordinance of the city of New Orleans, and from asserting, claiming, or pretending that he or they, [or] any of them, derive or have any right or authority thereby, or from
45 any other source, to lay, constrict, establish, or cause to be laid, constructed, established, or used, any such pipe or pipes, conduits or mains, for the purpose of procuring or obtaining the water supply of the said hotel from the Mississippi river or any other source than from the conduits, mains, and pipes established, maintained, and operated by your orator, the New Orleans Water Works Company; and that it may please your honors on final hearing to adjudge and decree that the city of New Orleans was without lawful authority to make, adopt, ordain, or promulgate the said alleged ordinance hereinbefore set forth, and that the same was in all things null and void and of no force and effect, and conferred and granted to the said defendants no right or authority, privilege, or licence whatsoever.

And may it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America
46 directed to the said Robert E. Rivers, thereby commanding him on a day certain, under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and stand to, perform, and abide such order and decree therein as to your honors shall seem meet and just, and to grant unto your orators such other and further relief in the premises as shall seem meet and agreeable to equity and good conscience, and as the nature of the case may require.

And your orator will ever pray, etc.

(Signed) L. H. GARDNER,
Secretary.

(Signed) J. R. BECKWITH,
Solicitor & Counsel for Complainant.

Subpœna in Chancery. Issued April 28th, 1884.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

47 You are hereby commanded to summon Robert E. Rivers

to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of June, 1884, then and there to answer a bill in chancery, filed against him, wherein The New Orleans Water-Works Company are complainants and said Robert E. Rivers is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 28th day of April, in the year of our Lord one thousand eight hundred and eighty-four, and the 108 year of American Independence.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

The defendant is hereby notified that he is required to enter
48 his appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1884; otherwise the bill may be taken *pro confesso.*

(Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received April 29th, 1884, by the U. S. marshal, and on April 30th, 1884, I served a true copy of the within subpœna in chancery on Robert E. Rivers, defendant herein, by delivering the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

Demurrer. Filed May 19th, 1884.

United States Circuit Court, Eastern District of Louisiana.

THE NEW ORLEANS WATER-WORKS COMPANY
vs.
ROBERT E. RIVERS. } No. 10560.

The demurrer of Robert E. Rivers, defendant to the bill of complaint of the New Orleans Water Works Company, the above-named plaintiff.

This defendant, by protestation, not confessing or acknowl-
49 edging all or any of the matters and things in plaintiff's bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that:

1st. That this honorable court is without jurisdiction *ratione personæ* all parties plaintiffs and defendants, and, as appears upon the face of the plaintiff's bill filed herein, are citizens of the State of Louisiana.

2nd. That this honorable court is without jurisdiction *ratione materiæ*, the matter in dispute, as appears upon the face of plaintiffs' bill, is not sufficient to give this honorable court jurisdiction.

3rd. That there is no cause of action or complaint, nor matter of

equity set forth and alleged in plaintiffs' bill, and were all the allegations in said bill contained true as therein stated and set forth, which defendant does not admit the said bill contains not any matter of equity whereon to sustain such writ of injunction
50 as is sought and prayed for in said bill, nor hath plaintiff, in and by said bill, stated and made such a case as doth or ought to entitle said plaintiff in this honorable court to any relief from or against this defendant, touching the matters contained in said bill, or any of such matters.

Wherefore, and for divers and other reasons and good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed, with his reasonable costs in this behalf sustained.

(Signed) G. L. HALL,
Solicitor for Defendant.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) G. L. HALL,
Solicitor for Defendant.

Robert E. Rivers, being sworn, says: That he has read the
51 foregoing demurrer, and that the same is not interposed for delay, and that he is the defendant.

Affidavit waived.

(Signed) J. R. BECKWITH,
Solicitor for Complainant.

Extract from Chancery Order-Book, May 19th, 1884.

NEW ORLEANS WATER-WORKS COMPANY *vs.* ROBERT E. RIVERS. } No. 10560.

Now comes the complainant herein, by its solicitor, J. R. Beckwith, and sets down for argument the demurrer filed in this cause.

Stipulation to file Act of Transfer on file in 10031. *Filed May 22nd*, 1884.

Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER-WORKS COMPANY *vs.* ROBERT E. RIVERS. } No. 10560.

It is stipulated and agreed that the act of transfer of the city of New Orleans to the New Orleans Water-Works Company, on file in the case of the New Orleans Water-Works Company *vs.* St.
52 Tammany Water-Works Company *et al.*, No 10031 of the docket of this court, shall be filed in this cause, and, on the

trial of the demurrer herein, shall be taken as an exhibit and part of the bill herein.

(Signed) J. R. BECKWITH,
Sol'r for Complainant.

(Signed) G. L. HALL,
Sol'r for Defendant.

Continuance. Extract from the Minutes, Apr. Term, 1884.

NEW ORLEANS, THURSDAY *May 22nd*, 1884.

Court met pursuant to adjournment. Present: Hon. Don A. Pardee, circuit judge.

NEW ORLEANS WATER-WORKS CO. vs. R. E. RIVERS. No. 10560.

By consent of counsel the cause is continued to the 24 inst. at 11 a. m.

Submission of Demurrer. Extract from the Minutes, April Term, 1884.

NEW ORLEANS, SATURDAY May 24th, 1884.

Court met pursuant to adjournment. Present: Hon. Don A. Pardee, circuit judge.

NEW ORLEANS WATER-WORKS CO. vs. ROBERT E. RIVERS. No. 10560.

This cause came on to be heard on the demurrer to complainant's bill—present, J. R. Beckwith, Esq., for complainant; G. L. Hall, Esq., or demurrant—and after argument of counsel, the matter was submitted on briefs, and the court took time to consder.

53 *Order Cause to be Restored, &c. Extract from the Minutes, April Term*, 1884.

NEW ORLEANS, SATURDAY *June 7th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

NEW ORLEANS WATER WORKS COMPANY vs. ROBERT E. RIVERS. No. 10560.

The court this day made the following order herein:

This case has heretofore been submitted on demurrer to the bill. In view of the recent decision of the Supreme Court of the United States in the case of the Butchers' Union Slaughter-House and Live Stock Landing Company *versus* The Crescent City Live Stock Landing & Slaughter-House Company, this cause is ordered to be restored to the docket, to be again set down for argument before the circuit & district judges sitting together.

Hearing & Submission. Extract from the Minutes April Term, 1884.

NEW ORLEANS, *June 13th*, 1884.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

N. O. WATER WORKS COMPANY
vs.
ROBERT E. RIVERS. } No. 10560.

54 This cause came on to be heard on the demurrer to the bill, & having been argued by counsel for complainant & demurrant, the court took time to consider.

Act of Transfer. Filed June 13th, 1884.

UNITED STATES OF AMERICA:

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Be it known that on this ninth day of the month of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the 102d, before me, Gustav Le Gardeur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Edward Pilsbury, mayor of the city of New Orleans, herein duly authorized in the full execution of these presents, under and by virtue of resolution No. 4118, administration series, adopted by the council
55 of the city of New Orleans on the 26th day of March, 1878, a certified copy of which said resolution is hereto annexed for reference.

And also came and appeared Edward Toby, Esquire, of this city, herein appearing, stipulating, and acting for and in the name and on behalf and as president of the New Orleans Water-Works Company, a corporation of this city, duly created by act No. 33 of the Legislature of this State, entitled "An act to enable the city of New Orleans to promote the public health and to afford greater security against fire by the establishment of a corporation, to be called the New Orleans Water-Works Company; to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water-works' bonds to convert them into stock, and to provide for the bonded and floating debt of the city of New Orleans," approved March 31st, 1877, and amended by act No. 43 of the Legisla-
56 ture of this State, entitled "An act relative to the charter of the New Orleans Water-Works Company, and amending an act, number thirty-three of extra session of eighteen hundred and seventy-seven (1877)," approved February 26th, 1878, the said Edward Toby herein acting as president aforesaid, and duly authorized in the full execution of these presents, under and by virtue of a resolution adopted by the board of directors of the said New Orleans

Water-Works Company, at their sitting of the 8th day of April, 1878, a certified copy of which said resolution is hereto annexed for reference.

Which said appearers, in their respective capacity, severally declared and said:

That in compliance with the provisions and requirements of said act No. 33, approved March 31st, 1877, as amended by said act No. 43, approved February 26th, 1878, the said New Orleans Water-Works Company was duly organized.

That in accordance with the public notice given by the
57 mayor, the subscribers to the capital stock of the said New Orleans Water-Works Company have assembled together, at the office of the Merchants' Mutual Insurance Company, No. 104 Canal street, in this city, on the thirtieth day of March, 1878, between the hours of 12 m. and 2 p. m., and that then and there, in compliance with the provisions of section 3 of said act No. 33, as amended by said act No. 43, they, the said subscribers, have elected the board of directors of the said New Orleans Water-Works Company, as the whole will more fully appear by the process verbal of the meeting of said subscribers, a certified copy whereof is hereto annexed for reference.

That in conformity with the provisions of said act No. 33, creating the said company, it, the said New Orleans Water-Works Company, has transferred and delivered to the city of New Orleans, as is hereby acknowledged, by the said Mayor Pilsbury, for and in the name of the city of New Orleans, all the certificates for the shares
58 of stock of the said New Orleans Water-Works Company, ammounting to twenty thousand shares, of one hundred dollars each, forming the capital stock of two millions of dollars ($2,000,000) of this company.

That in further compliance with said act No. 33, approved March 31st, 1877, the stock thus transferred and delivered to the city of New Orleans, as aforesaid, has been disposed of by the said city in the manner following, to wit:

1st. Amount of stock, full paid, and not subject to assessment, subscribed for by the city of New Orleans, six hundred and six thousand six hundred dollars	$606,660 00
2d. Amount issued to the city in the proportion of one share of stock, full paid, and not subject to assessment, for each and every one hundred dollars of water-works bonds founded in premium bonds, four hundred and fifty-one thousand four hundred dollars	451,400 00
59 3d. Amount issued to the city in the proportion of one share of stock, full paid, and not subject to assessment, for each and every one hundred dollars of water-works bonds redeemed by the city, one hundred and eleven thousand five hundred dollars	111,500 00

4th. Amount exchanged by the city with the subscribers of the capital stock of the said New Orleans Water-Works Company in the proportion of one share of stock, full paid, and not subject to assessment, for each and every one hundred dollars of water-works bonds surrendered by the said subscribers to the city, five hundred and one thousand six hundred dollars	$501,600 00
5th. Amount reserved for the benefit of all holders of water-works bonds who may elect to subscribe to the capital stock of the said New Orleans Water-Works Company, to be exchanged by the city with the holders of said bonds in the proportion of one share of stock, full paid, and not subject to assessment, for each and every one hundred dollars of said water-works bonds surrendered to the city, three hundred and twenty-eight thousand nine hundred dollars	328,900 00
Total amount of stock transferred and delivered to the city, two millions of dollars	$2,000,000 00

Now, therefore, by virtue of the foregoing, and in consideration of the two millions of dollars of stock hereinabove transferred and delivered to the city, the receipt whereof is hereby acknowledged by the said Mayor Pilsbury, he, the said Mayor Pilsbury, declared
61 that, by virtue of the authority in him vested by the aforesaid resolution, No. 1416, administration series, and in compliance with section 4 of said act No. 33, approved March 31st, 1877, creating the said New Orleans Water-Works Company, he, the said mayor, does, by these presents, in his said capacity and for and in the name and on behalf of the city of New Orleans, grant, bargain, sell, convey, transfer, assign, and set over, with all legal warranties and with full subrogation to all the rights and actions of warranty to which the city of New Orleans is or may be entitled against all preceeding vendors and owners, unto the said New Orleans Water-Works Company, the said Edward Toby, as president aforesaid, accepting and purchasing for and in the name of the said New Orleans Water-Works Company, and acknowledging due delivery and possession thereof, all and singular the property, real and personal, of whatever nature or kind soever, belonging to the water-works constructed and established by the Commercial Bank of New Orleans
62 and subsequently by the city of New Orleans, and the dykes, mounds, reservoirs, machinery and apparatus, engines, boilers, pumps, conduits, aqueducts, pipes, tools, and all appurtenances thereunto belonging or in anywise appertaining, and the following real estate, to wit:

1st. A certain square of ground, together with the reservoirs, buildings, and all other improvements thereon, and the rights, servitudes, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the Faubourg Annunciation, in

the first district of this city, designated by the No. eighteen on a plan of said faubourg drawn by B. Lafon, surveyor, dated the fifteenth day of May, 1807, which said square is bounded by Religious, St. Thomas, formerly St. John the Baptist, Richard, and Market streets, and it has a front on each of the said streets of three hundred feet; and by a sketch made by J. A. d'Hemecourt, city
63 surveyor, dated the 5th day of April, 1878, and hereto annexed for reference; the said square is designated by the No. eighty-three, and measures three hundred and nineteen feet eight inches and two lines front on Religious street, three hundred and nineteen feet ten inches and one line front on St. Thomas street, three hundred and nineteen feet eleven inches and one line front on Market street, and three hundred and nineteen feet ten inches and four lines front on Richard street.

2nd. A certain piece or portion of ground, together with all the buildings and improvements thereon, and the machinery and apparatus, boilers, engines, iron chimney, and all the rights, privileges, servitudes, ways, and appurtenances thereunto belonging or in anywise appertaining, situated in the suburb Lorcourse, in the first district of this city, in the square bounded by New Levee, Tchoupitoulas, Richard, and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New
64 Levee street, one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and three lines front on Richard street, and three hundred and eighty-three feet seven inches and three lines on a straight line running from the termination of the line on said New Levee street to the termination of the line on Tchoupitoulas street aforesaid, parallel to Orange street, and dividing the said piece or portion of ground from the property now or formerly belonging to A. Caldwell and R. Toledano, which form the remainder of said square, which is designated by the No. thirty-nine on the above-mentioned annexed sketch by J. A. d'Hemecourt, according to which said sketch said piece or portion of ground measures one hundred and ninety-one feet six inches and six lines front on New Levee street, one hundred and ninety-one feet seven inches and six lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and three lines front on Richard street,
65 and three hundred and eighty-three feet and eight inches on said line dividing the said piece or portion of ground from the property of Caldwell and Toledano.

All of which said above-described property, real and personal, was acquired by the city of New Orleans by purchase from the Commercial Bank of New Orleans, by act passed before Andrew Hero, Jr., a notary public in this city, on the nineteenth day of January, 1879.

3d. A certain square of ground together with all the rights, ways, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city, comprised between Peters (late New Levee), Water, Orange, and Richard streets, and designated by the No. thirty-two A, as per plan drawn by Louis

H. Pilié, surveyor, dated the 29th of June, 1867, and deposited for reference in the office of H. C. Dibble, a notary public in this city, as plan No. 19, according to which said plan said square is
66 divided into twenty-eight lots numbered from one to twenty-eight inclusive, and they measure as follows, to wit:

Lot No. one forms the corner of Water and Richmond streets, and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width in the rear, by one hundred and nine feet and four inches in depth, and front on Richmond street.

Lots Nos. two to eleven inclusive adjoin each other and measure each twenty-six feet and seven inches front on Water street by one hundred and nine feet and four inches in depth between parallel lines.

Lot No. twelve forms the corner of Water and Orange streets and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width on the rear, by one hundred and nine feet and four inches in depth and front on Orange street.

Lots Nos. thirteen and fourteen adjoin each other and
67 measure each twenty-six feet front on Orange street by one hundred and fifty-nine feet eight inches and four lines, more or less, in depth between parallel lines.

Lot No. fifteen forms the corner of Orange and Peter streets and measures twenty-six feet eight inches and six lines front on Peter street, twenty-six feet nine inches and four-and a-half lines in width in the rear, by one hundred and nine feet and four inches in depth and front on Orange street.

Lots Nos. sixteen to twenty-five inclusive adjoin each other and measure each twenty-six feet and seven inches front on Peters street by one hundred and nine feet and four inches in depth between parallel lines.

Lot No. twenty-six forms the corner of Peters and Richard streets and measures twenty-six feet nine inches and five lines front on Peters street by one hundred and nine feet and four inches in depth and front on Richard street.

68 Lots Nos. twenty-seven and twenty-eight measures each twenty-seven feet front on Richard street by one hundred and fifty-nine feet eight inches and four lines in depth between parallel lines.

And by the above-mentioned annexed sketch of J. A. d'Hennecourt square is designated by the No. 21 B, and measures three hundred and nineteen feet four inches and four lines front on Water street, three hundred and nineteen feet five inches and three lines front on Peters street, two hundred and seventy-two feet and eight inches front on Richard street, and same front on Orange street. And the said square of ground was acquired by the city of New Orleans from John H. O'Connor by act passed before Andrew Hero, Jr., a notary public in this city, on the sixteenth day of July, 1872.

To have and to hold the herein conveyed property unto the said

New Orleans Water-Works Company, its successors and as-
69 signs, forever, by virtue of these presents, subject, however, to the provisions of section 17 of said act No. 33, approved March 31st, 1877, as amended by said act No. 43, approved February 26th, 1878.

By reference to the annexed certificate of the register of conveyances it does not appear that the herein conveyed property had been heretofore alienated by the said vendor.

And now the said parties hereto declared that they do hereby dispense with the certificate of the recorder of mortgages, and exonerate the undersigned notary from any and all responsibility for the non-production of said certificate.

Thus done and passed in New Orleans, at my office, the day, month, and year first above written, in the presence of Messrs. Armand Pitot, Jr., and Edward Pitot, competent witnesses, who have
70 signed with the said parties and me, notary, after reading the whole.

Original signed: E. PILSBURY, *Mayor.*
EDWARD TOBY, *President.*
A. PITOT, JR.
EDW. PITOT.
G. LE GARDEUR, JR., *Not. Pub.*

Registered in Conveyance Book No. 110, folio No. 453. New Orleans, April 9th, 1878.
(Signed) D. B. PENN, *R. C.*

A true copy of the original on file and of record in my office. New Orleans, April 12th, 1878.
[SEAL.] (Signed) G. LE GARDEUR, *Not. Pub.*

Decree. Entered & Filed June 20th, 1884.

Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER-WORKS COMPANY
vs. } No. 10560.
R. E. RIVERS.

Final Decree.

This cause came on to be heard upon the bill of complaint,
71 with its exhibits and the demurrer of the defendant thereto, and the court having heard counsel as well for the complainant as the defendant, and being advised in the premises—

It is ordered, adjudged, and decreed that the demurrer of the defendant be sustained, and the bill of complaint herein be dismissed; and that the defendant have and recover his costs, to be taxed.

(Signed) DON A. PARDEE, *Judge.*

Motion & Order for Appeal. Entered and Filed June 21st, 1884.

Circuit Court of the United States, Eastern District of Louisana.
In Equity.

THE NEW ORLEANS WATER-WORKS COMPANY
vs.
ROBERT E. RIVERS. } No. 10569.

On motion of J. R. Beckwith, solicitor for complainant herein, and on suggesting to the court that the complainant feels aggrieved by the final decree herein made at the present term of this
72 court dismissing the said bill of complaint with costs, and is advised that there is error in said final decree to its prejudice, and that complainant desires to appeal therefrom to the Supreme Court of the United States—

It is ordered that the said complainant be, and is hereby, granted and allowed an appeal from said decree herein to the Supreme Court, returnable in said Supreme Court on the first day of the next regular session thereof, upon giving bond in the sum of five hundred dollars, with good and sufficient surety, conditioned as the law directs, and that such appeal operate a supersedeas of the judgment for costs herein.

(Signed) DON A. PARDEE, *Judge.*

Bond for Appeal. Filed June 21st, 1884.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, The New Orleans
73 Water-Works Company, principal, and L. H. Gardner, surety, are held and firmly bound, jointly and severally, unto Robert E. Rivers in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Robert E. Rivers, his heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the 21st day of June, in the year of our Lord eighteen hundred and eighty-four.

Whereas the said New Orleans Water-Works Company having heretofore, to wit, on the 21st day of June, 1884, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 20th day of June, 1884, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of The New Orleans Water-Works Company, complainant, *vs.* Robert E. Rivers, defendant, No. 10560 of the docket thereof

74 Now the condition of the above obligation is, that if the above-bounden New Orleans Water-Works Company shall prosecute its said appeal to effect, and shall answer all damages and

costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

NEW ORLEANS WATER-WORKS CO.

(Signed) L. H. GARDNER, [L. S.]

Sec'y & Treas'r.

(Signed) L. H. GARDNER. [L. S.]

Signed, sealed, and delivered in the presence of—

Affidavit of L. H. Gardner. Filed June 21st, 1884.

Circuit Court of the United States, Eastern district of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY *vs.* R. E. RIVERS. } In Equity. No. 10560.

L. H. Gardner being duly sworn, deposeth and saith: That he is secretary and treasurer of the New Orleans Water-Works Company, the complainant in this cause; that he is well acquainted
75 with the affairs of said company; that complainant will suffer a loss of money and revenue exceeding the sum of ten thousand dollars, as the direct result of this final decree in this cause, if under said decree the said defendant *says* and established the pipes and mains authorized by the ordinance of the city of New Orleans, set forth in the bill of complaint in this cause, and that without the exclusive right conferred by the charter of said company, and if such rights can be lawfully disregarded and overthrown by the act of the State or the city of New Orleans, as shown by the bill of complaint herein, the value of the right and the property in the New Orleans water works and its purchasers left and remaining in its shareholders is more than two hundred thousand dollars less than the market value of the bonds and debt of the city of New Orleans exchanged and surrendered by the shareholders in said company for the shares and stock in said company. That had it been taken thus it was in the
76 power and authority of either the State or city to destroy the property purchased with said bonds to the extent set forth and described in said bill of complaint, and by the adoption of the ordinance set forth in said bill of complaint no person would have exchanged city bonds and evidences of debts for said water-works stock, nor would said company have accepted the obligations to furnish full water supply for cleansing streets and extinguishment of fires and other purposes bound in the charter of said company, nor would the shareholders have assumed the obligations of extending the works, as provided for in said charter, the only source of means to effect such extension being from the revenues of said corporation, arising from the sale of water, which could only be made available by being authenticated by loans secured by mortgage on the property and purchases of the company, the entire capital stock consisting, under the terms of the charter, in extinguished debt of the city of New Orleans.

77 (Signed) L. H. GARDNER.

Sworn to and subscribed before me, on this 21st day of June, 1884.

[SEAL.] (Signed) WILLIAM L. POOLE,
Notary Public.

Stipulation. Filed July 31st, 1884.

Circuit Court of the United States, Eastern District of Louisiana.

On appeal to the Supreme Court of the United States.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
ROBERT E. RIVERS. } No. 10560.

It is stipulated and agreed by and between the complainant and appellant and the defendant and appellee in this cause that the appellant procure the printing of the transcript and record in this cause, and that the same be submitted to the Supreme Court on printed arguments, as provided in rule twenty of the Rules of the Supreme Court, the defendant and appellee to have twenty days of the term of Supreme Court after delivery of copy of printed record and printed argument of appellant to respond to the same.

New Orleans, June 2d, 1884.

(Signed) J. R. BECKWITH,
Sol'r for Complainant and Appellant.

(Signed) G. L. HALL,
Sol'r for Defendant, R. E. Rivers.

78 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 77 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of The New Orleans Water Works Company *versus* Robert E. Rivers, No. 10560 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5th day of July, A. D. 1884.

[SEAL.] E. R. HUNT, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 5th day of July, A. D. 1884.

DON A. PARDEE, *Judge.*

79 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Robert E. Rivers, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The New Orleans Water-Works Company are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said New Orleans Water-Works Co., as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of June, in the year of our Lord one thousand eight hundred and eighty-four.

DON A. PARDEE, *Judge*.

80 [Endorsed:] G. L. Hall, solicitor. United States circuit court. R. No. 10560. The New Orleans Water-Works Company, appellants, *vs.* Robert E. Rivers, appellee. Citation. Marshal's return. Received, Jul. 3, 1884, by the U. S. Marshal, and on July 3d, 1884, I sereved a true duplicate of this, the original citation of appeal, on Robert E. Rivers, appellee herein, by delivering the same to him in person, in the city of New Orleans, eastern district of Lousiana. J. R. G. Pitkin, U. S. marshal, east. dist. of La., by E. S. Curry, d'y U. S. marshal. Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate of this, the original citation of appeal, on the appellee within named, as set forth in his official return hereon. E. S. Curry, d'y U. S. marshal. Subscribed and sworn to before me, July 5, 1884. E. R. Hunt, commissioner United States circuit court, eastern district of Louisiana. No. —. U. S. circuit court, eastern district of Louisiana. Filed July 5, 1884. E. R. Hunt, clerk.

Endorsed on cover: E. Lousiana C. C. U. S. No. 883. The New Orleans Water-Works Company, appellant, *vs.* Robert C. Rivers. Filed July 21st, 1884.

116-674

IN THE

Supreme Court of the United States.

No. 883.—October Term, 1884.

The New Orleans Water Works Company, Appellant,

vs.

Robert E. Rivers, Appellee.

Brief for the Louisiana Sugar Refining Company.

A. GOLDTHWAITE, Attorney.

J. L. Pearson, Printer, 9th and D sts., Washington.

IN THE

Supreme Court of the United States.

No. 883.—October Term, 1884.

The New Orleans Water Works Company, Appellant,

vs.

Robert E. Rivers, Appellee.

Brief filed by A. Goldthwaite, Esq., attorney for the Louisiana Sugar Refining Company.

Leave having been granted to the Louisiana Sugar Refining Company to file a brief in this cause, we respectfully submit the following:

Robert E. Rivers, the lessee of the St. Charles Hotel in New Orleans, had permission and license from the Common Council of the City of New Orleans to lay a water-pipe from the Mississippi River through certain streets to the hotel, and to distribute the water through to said hotel. The pipe was to be placed under the supervision and approval of the city surveyor.

In accordance with the license the said Rivers was proceeding to act when a bill was filed by the New Orleans Water Works Company to restrain him. The Water Works Company allege that they have a contract with the city of New Orleans, giving to them the exclusive privilege and right of supplying the city of New Orleans and the inhabitants with water by a system of public water

works, to the exclusion of all other means and sources of supply through pipes or conduits brought into the said city.

There is no allegation that the water to be drawn from the Mississippi River by appellee will be for other than the domestic supply and use of the hotel; or that it will be distributed gratuitously or for a price to any of the inhabitants of the city of New Orleans; or that the license is being exercised except strictly in accordance with the ordinance of the Common Council.

The right of the city to pass the ordinance allowing to Rivers, or the lessee, whoever he might be, the right of way to lay a water-pipe through the streets with the needed attachments, and to distribute the water through the hotel, is denied.

The jurisdiction of the United States Circuit Court is invoked because by the allegations of the bill the said ordinance impairs the obligation of the contract made by the city of New Orleans with the New Orleans Water Works Company. That the result and effect of said ordinance will be to particularly confiscate and render of no value the rights and property of the shareholders in the Water Works Company.

The sole issue then involved is the validity of the city ordinance.

The ordinance is found in the printed record at p. 11. It "*allows the right of way and privilege to lay a water-pipe from the Mississippi River, at any point opposite to the head of Commerce or Gravier streets, through either of those streets to said hotel, its fronts and side streets, with all needed attachments and appurtenances, and to distribute said water through said hotel as said R. E. Rivers, or lessee, may desire, from said pipes, the said pipes to be put at a depth of three feet under the surface of said streets, to be of iron, * * * the said pipes and all attachments thereto, in said streets, to be arranged and placed under the supervision and approval of the city surveyor.*

"*The pavement and streets to be relaid to the satisfaction of the administrator of improvements and city surveyor.*"

The act of 1833, vide Pamphlet Acts La. 1833, p. 153, at section 4, "grants forever the exclusive privilege, from and after the passage of the act, of supplying the city and inhabitants of New Orleans and its faubourgs with water from the Mississippi by means of pipes, and for erecting, constructing, or working any necessary engine." And in order to convey such water they have the further privilege, though not exclusive, "to lay and place any number of conduits, pipes, and aqueducts, and to cleanse or repair the same through or over any of the lands or streets of the city of New Orleans and its faubourgs."

The act of 1877, found in Pamphlet Acts La. of Extra Session, 1877, No. 33, at p. 32, section 5, gives to the New Orleans Water Works Company, for fifty years, "the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi River, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or machines for that purpose." Like the act of 1833, it give the company the right, though not exclusive, "to lay and place any number of conduits or pipes or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the city."

We make the distinction between the exclusive privilege granted to supply the city of New Orleans and its inhabitants with water and the privilege or license to lay a water-pipe through certain streets to reach what belongs to all in common, the water of a great navigable stream.

The license or franchise to sell and distribute water, and, as incidents to that franchise, to lay pipes and erect engines, is one thing, the permission to lay a pipe along a street, to reach what one is entitled to, is very different.

It may be that the Legislature of Louisiana intended to give to this favored company and its predecessor the exclusive right to use the great Father of Waters in the city of New Orleans that all should pay tribute to the Water-Works Company. It may be that it was never intended to

restrict private individuals from getting all that they could use for their domestic supply. If the franchise included the exclusive privilege of laying pipes through the city of New Orleans, we can gather it only by implication. The express words are absent from the statute. Such interpretations are not favored.

In the cases of Norwich Gas Light Co. *vs.* Norwich City Gas Co., 25 Conn., 19, and The People *vs.* Bowen, 30 Barbour's Supreme Ct. Rep., 37, the distinction between the exclusive privilege to lay pipes through the streets and the privilege to distribute and sell is plainly made.

In the case of St. Ex Rel., etc. *vs.* Cincinnati Gas Co., 18 Ohio, at p. 291, the court say: "We think it cannot be doubted that the right to use the streets of a city for the purpose of laying pipes to convey gas, whether in the hands of a private corporation or a natural person, is a franchise."

It is not the right to distribute and sell or to supply the inhabitants with gas.

The use of streets for the purpose of laying down water-pipes stands upon the same principles as their use for sewers and gas-pipes.

Dillon's Municipal Corp., sec. 697, 3rd ed.

The charter of the Commercial Bank in 1833, at section 4; and again as will appear in section 33, gave no exclusive privilege to lay pipes through or under the streets of the city of New Orleans. When the present company, The New Orleans Water-Works Company, was chartered in 1877, by section 5, of Article 33, Pamphlet Acts of Louisiana, 1877, this company got what the Commercial Bank had obtained in 1833. They obtained the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi River or any other river or stream by means of pipes and conduits.

The charter at section 12 gave them the right in the

city of New Orleans and its suburbs, and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water.

Nowhere can we find this exclusive right to the use of the streets and public places for such purposes as we find in other charters of a like nature.

If the intention existed, it failed through the ignorance of the authors to appreciate the distinction between the franchises to lay pipes and to supply, sell or distribute water.

The right to erect water-works in New Orleans, to take up pavements, occupy the streets and do such things as were necessary and proper, was in the city of New Orleans through its corporate powers from the State. The control of the streets was vested in the city.

The appellee had the license from the city. It will not do to assert that the appellee should derive his right from the State. The appellant must recover on the strength of his own case, not in the weakness of his adversary's case.

The Water-Works Company is nothing more than a private corporation. It claims a benefit—exclusive privileges conferred upon them. There are no presumptions in favor of such special privileges. They are obnoxious. They are pregnant with public ~~mischief~~ and private hardship.

II.

By the Civil Code of Louisiana, Articles 450, 453, running water is common to every body. All men may freely use it.

A navigable stream is a public thing which all members of the nation can use.

It comes to us from the Roman law.

In the case of Linlithgow *vs.* Elphinstone, 3 Kames' Decisions, Lord Kames says: "A river may be considered

as the common property of the whole nation; but the law declares against separate property of the whole or part. *Et quidem naturali jure communia sunt: haec aer, aqua profluens et mare.*" 1 *Inst. de Rerum Divisione.*

No individual can appropriate a river or branch of it; but every individual of the nation, those expressly who have land adjoining, are entitled to use the water for their private purposes.

Private purposes include the use of it for irrigation and manufacturing.

English Law, Chancery Appeals, Vol. IX., 457.
English Law, Chancery Division, Vol. X., 707.
6 Exchequer, 352.
2 Watts, (Pa.), 327.
6 Barr (Pa.), 32.
3 Scammon, 492.
3 Exchequer, 780.

A grant by the legislature cannot pass any title to the *corpus* of the water, or prevent its use for the ordinary purposes of life.

In the case of Mayor, &c. *vs.* Commissioners Spring Garden, 7 Barr (Pa.), 363, Gibson, C. J., says, referring to quotations from the civilians and from Lord Hale:

"They establish that the use of water, flowing in its natural channel, like the use of heat, light or air, has been held by every civilized nation, from the earliest times, to be common by the law of nature, and not merely public, like the use of a river or a port, which is subject to municipal regulation by the law of the place. They establish, also, that the domestic uses of water are its natural and primary ones. Air is not more indispensable to the support of animal or vegetable life. Water is borne by the air, in the form of vapor, to the remotest regions of the earth, for the free use and common refreshment of mankind; and to interdict the use of the one within any particular locality, would be as monstrous and subversive of

the scheme of animal existence, as it would be to interdict the use of the other."

Again: "According to the argument, it would be an infringement of the company's right, to draw water from the river even above the charter-ground. But is it possible to think that in granting the company authority to use or sell the power of the surplus water, the legislature intended to appropriate the whole stream, for every purpose, to its exclusive use, and to debar the inhabitants of the contiguous villages and farms from using any part of it for drinking, cooking, washing, or any other domestic purpose? It would be monstrous to suppose it. The very extravagance of the pretension is an irresistable argument against it. The intent of the legislature was to give the company a monopoly of the power incidentally created by its works, and to give it no more, for the words of the section go no further."

It is known that in New Orleans the inhabitants use rain water, caught in cisterns, for drinking purposes, they not generally having the means to filter their river water.

It might be claimed by this company, with no more pretension or extravagance of assertion, that the inhabitants must depend for their supply of water upon this company and pay tribute to it.

The fact being admitted that the inhabitants of New Orleans are entitled to use the water from the Mississippi River for their domestic purposes, it is equally consistent and follows that he has a right to do so, by such means, artificial or otherwise, as are suitable for that purpose.

Mayor, &c., *vs.* Commissioners Spring Garden, 7 Barr, Pa. 363.

Wadsworth *vs.* Tillotson, 15 Conn. 366.

So long as the right is exercised without diminishing the rights of others to its use, no complaint can be made.

The passage or right of way is another thing to be considered. We may have the right to use it in common

with all others, and have no right to open sluices, lay pipes or conduits in and through the land of another.

The right of drawing water from the spring of another in Louisiana is a servitude.

The conducting of water or aqueduct is the right by which one conducts water from his estate through the land of his neighbor, by means of an aqueduct or ditch.

Civil Code, Articles 723-4.

The two rights are both servitudes but distinct. The act of man which was needed to give us the discontinuous servitude of the right of passage under Article 727, Civil Code, we have in the ordinance of the Common Council.

For the purposes of sanitation, sewerage, drainage, inspection, lighting the streets, and regulating the water supply, the municipal authorities are clothed with full power by the charter of the city.

Vide City Charter, section 7.
Pamphlet Acts Louisiana, 1882, p. 20.

III.

The right of Rivers, the appellee, in this case, is to lay a water-pipe to the Mississippi River, through certain streets of the city of New Orleans, under an ordinance passed by the Common Council, the municipal authority. The right of passage will enable him to get a supply of water for the domestic supply needed by the hotel free of cost.

The right to lay water-pipes and a waste-pipe has been granted to the Louisiana Sugar Refining Company, the defendant in error in case No. 947 on the docket of this court. Other manufactories, not before the court, have been granted the same license under like ordinances. The supply of water required for manufacturing purposes is large, enormous.

The appellant seeks to coerce the manufactories of New Orleans into paying for every gallon of water used by them. It has the right, under its charter, to fix charges therefor within the limits of New Orleans, limited only by the provision that the net profits of the company from that source shall not exceed ten per cent. per annum upon the capital stock thereof.

Vide printed record, p. 7.

The Supreme Court of Louisiana, in the case of The N. O. Water-Works Co. *vs.* The Louisiana Sugar Refining Co., 34 An., rejected the pretensions of the Water-Works Company.

Bermudez, C. J., says: "The right conferred by the legislature in 1833 and confirmed in 1877 was not to draw water from the river, nor was it to lay pipes and conduits in the lands and streets of the city of New Orleans. It was the *exclusive* privilege of supplying the city and its inhabitants with water drawn from the river by these means, the object in view being, on account of benefits derived by the city, the exclusion of all others, corporations and individuals, from making a similar supply; in other words, from selling and vending water."

When the people of Louisiana framed their last constitution of 1879, at sections 235 and 259, they passed their judgment upon corporations claiming exclusive privileges.

Vide Pamph. Acts La., 1880.

The people and courts are opposed to corporations claiming special favors.

This Court has shown no disposition to foster such excrescences.

We refer to Boyd *vs.* Alabama, 94 U. S., 645; Patterson *vs.* Kentucky, 97 U. S., 501; Beer Co. *vs.* Massachusetts, 97 U. S., 25; Stone *vs.* Mississippi, 101 U. S., 814; Butchers' Union *vs.* Crescent City Co., 111 U. S., 746.

It has been supposed that a great river conferred bene-

fits, and that the inhabitants of a great city built upon the banks would enjoy advantages. When a new spirit has entered into our people, and manufactories are being built up, they are halted and the highwayman's demand is made upon them: Your money or your life. In the case of the Water Works Company *vs.* The Louisiana Sugar Refining Company, the testimony of the consulting engineer, William Golding, shows that the capacity of the Refining Company's pipe is from 3,000,000 to 10,000,000 gallons per diem. The expense of water to the refinery, if they used the pipe to its full capacity, would be from $600 to $2,000 per diem.

So much tribute would it have to pay for water.

If we have to pay for water the wit of the legislature may soon be taxed to contrive how an exclusive privilege to supply heat or air can be granted to some corporation.

A. GOLDTHWAITE,

Counsel for Louisiana Sugar Refining Company.

115-674

Supreme Court of the United States

OCTOBER TERM 1884.

No. 883.

THE NEW ORLEANS WATER WORKS COMPANY,
APPELLANT,

vs.

ROBERT C. RIVERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Printed Argument of Appellant.

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Supreme Court of the United States

OCTOBER TERM 1884.

No. 883.

THE NEW ORLEANS WATER WORKS COMPANY,
APPELLANT,

vs.

ROBERT C. RIVERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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STATEMENT OF FACTS.

This action was commenced by bill filed in the Circuit Court, on the 28th of April, 1884, and was instituted to settle a dispute concerning the extent of the rights secured to the complainant and appellant, in its charter, as granted by special act of the Legislature of Louisiana, approved March 31, and amended February 26, 1878.

By an act approved April 1st, 1833, (session laws 1883, 151), the Legislature of Louisiana chartered a corporation called "The Commercial Bank of New Orleans." At that time it was the settled policy of the State to attach, as a condition, to all charters of banking institutions the construction of some work by internal improvement or public utility. In conferring on The

Commercial Bank banking privileges, with a capital stock of three millions, the Legislature attached to the franchise a condition declared to be "the object of the charter," requiring the corporation to furnish the City of New Orleans with water supply to be taken from the Mississippi river, distributed through the city for public use and for the use of inhabitants, by a properly constructed system of mains, pipes and conduits.

The right to establish and carry on the system of water works was to continue vested in the corporation "forever," with a proviso, however, "that at any time after the expiration of thirty-"five years from the passage of this act, it shall be lawful for "the authorities of the city of New Orleans to purchase from the "Commercial Bank of New Orleans, the water works constructed "by said Company in virtue of this act, and said Company shall "not refuse to sell the works aforesaid, with all of the rights and "appurtenances pertaining to the same, on the terms hereinafter "provided."

The terms upon which the city could, at its election, purchase the water works referred to in the above proviso, are contained in the 42d section of the charter.

Appraisers were to be appointed to fix the value of the works and price to be paid, and when ascertained, the price to be paid the bank was to be paid in five per cent. bonds of the city, redeemable not less than ten or more than forty years from the day when the price was fixed by written report of the arbitrators. When the bonds were executed and delivered, the bank was required to deliver the works to the city.

The city was given the election, if exercised within thirty days from the first opening of books for subscription to capital stock, to subscribe for five thousand shares of the capital stock and pay for the stock with municipal bonds, redeemable in forty years.

The city elected to subscribe for the five thousand shares and issued its bonds in payment. In the event of subscription by the city, certain rights and representation in the board of directors, etc., were to follow the subscription. So much of the act of 1883, as it is necessary to consider, is printed in the appendix to this argument.

At the expiration of the term of thirty-five years from the

adoption of the act and charter, the city of New Orleans elected to purchase the water works. An appraisement of the interest of the shareholders in the Commercial Bank, other than the shares held by the city, was had and fixed at one million three hundred and ninety-three thousand four hundred dollars ($1,393,400). The bonds of the city of the character and description authorized by the bank charter, were issued by the city and delivered to the bank. The Commercial Bank transferred to the city full title to the water works by due form of conveyance, giving by effect of the statute full and exclusive right to carry on the works and receive the profits in the language of the act "forever" to the city.

The city continued to operate the works from 1868, the termination of the period of thirty-five years, until February, 1878.

During this period of ownership the financial affairs and condition of the city gravitated from extremely bad to superlatively worse. It was accumulating debt from annually increasing expenses of administration beyond its annual revenues from taxation and other sources. It was unable to pay the interest on the bonds issued to pay for the water works or discharge or diminish its constantly increasing floating debt not funded, or meet the principal of maturing bonds.

In 1877, the Legislature came to the rescue of the city and passed an act entitled "*an act to enable the city of New Orleans to promote the public health and afford greater security against fire, by the establishment of a corporation to be called the New Orleans Water Works Company, to authorize the said Company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of the city of New Orleans with an adequate supply of pure and wholesome water, and to permit the holders of Water Works bonds to convert them into stock and provide for the liquidation of the bonded and floating debt of the city of New Orleans,*" approved March 31, 1877, being Act No. 33, of the extra session of 1877; (this act is printed *in extenso*, in the appendix).

This act of 1877, provided for the incorporation of the New Orleans Water Works Company, with a capital stock of two million dollars. The par value of the stock subscribed for by the

city of New Orleans in the Commercial Bank of New Orleans, and paid for by its bonds issued in 1833, was six hundred and six thousand and six hundred dollars. These bonds had matured and been refunded. The act required the company created by the act to issue to the city of New Orleans $606,600 in stock, full paid, not subject to assessment. And the further amount of stock, one share of one hundred dollars for every one hundred dollars of Water Works bonds which the city had paid or redeemed of the bonds issued to pay the price of the interest owned by the Commercial Bank, when the city elected to purchase the Water Works at the end of the thirty-five years term.

The second section of the charter provides:

"That immediately after the organization of the said Water Works Company, as hereinafter provided, it shall be required to issue to the city of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of Water Works bonds which said city may have taken up heretofore and extinguished by payment, exchange or otherwise; and that the residue of said capital stock shall be reserved for the benefit of all holders of Water Works bonds, to the extent of the amount now outstanding, who may elect to avail themselves of the provisions of this act; and the said Water Works Company shall issue to the said city of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred dollars of said Water Works bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding Water Works bonds for stock, as aforesaid, the city of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Water Works Company, and shall, by advertisement for six months in two newspapers in the city of New Orleans and two newspapers in the city of New York, give notice that it will exchange said stock at par for said Water Works bonds at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city, and in case any of the said bondholders shall fail or refuse to avail themselves of this act within one year from the formation of said company, the said city of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid."

Section 3, of the charter enacts, "That the said Water Works

Company shall be organized by the Mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said Water Works bonds, which shall have been extinguished by said city; and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the Administrator of Finance, the said subscribers shall assemble together, on a day to be named by the Mayor, and shall elect a Board of Directors, to consist of seven persons, four of whom shall be designated by the Mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first Board of Directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said Board shall elect one of their number as President."

The charter further provides in Section 4, "That as soon after the election of said Board of Directors as the City Council may determine, the Mayor of the city shall transfer, by notarial act, to said New Orleans Water Works Company, the water works and all the property appurtenant thereto."

SEC. 5. *Be it further enacted, etc.*, That the said Waterworks Company shall own and possess the privileges acquired by the city of New Orleans from the Commercial Bank; that it shall have for fifty years from the passage of this act the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines, or machines for that purpose; that it may contract for, purchase or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city; or to distribute the same to the inhabitants of said city; and to construct, dig or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs, as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of conduits or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the City of New Orleans; *Provided*, the same shall not

be an obstruction to commerce or free circulation; and also to have and use a common seal and alter the same at pleasure; to ordain and establish by-laws for its government and that of its officers and employés, not repugnant to this Act and the Constitution of the State and of the United States, or the ordinances of the City of New Orleans

On the first Monday in July, 1878, and annually thereafter, the holders of stock other than the city of New Orleans, were to meet and elect four directors. The Mayor and two other officers of the city were to be *ex-officio* directors.

The city was given the right to cast one vote for each share of stock owned by the city "at the election of directors and at all meetings of said stockholders, in the same manner as other stockholders."

The stock held by the city is made exempt from seizure for debts due by the city. In section fourteen of the charter, the city is given authority to apply the stock given to the city, to the reduction of the bonded or floating debt of the city, upon such terms as the city might agree with its creditors holding the bonds or evidences of debt, with the proviso that the stock shall in no case be sold for less than par value, and that when sold, to be paid for in evidence of debt of the city, must be sold on stated proposals at the most advantageous rate, after due advertisement, with reserved right on the city to reject all bids.

In consideration for exemption from State, municipal and parochial taxation, the Water Works Company is to provide, free of charge, water for extinguishment of fires, cleansing gutters, for public buildings, etc. The Water Works Company is given the right to fix the tariff of charges for water furnished consumers, but is prohibited from continuing a tariff which will yield a dividend exceeding ten per cent. per annum from profits; the city to retain supervision in that respect, and require a reduction of tariff, in case profits exceed ten per cent.

By section 13 of the charter, the corporation is required to erect new works, pipes and mains; the work to be commenced before the expiration of one year, and to be completed within five. If not completed in the stipulated time, the exclusive privilege is to be forfeited.

The only source of funds to carry on and complete the enlarge-

ment and improvements required are: 1st. The revenues from the sale of water. 2d. Cash stock (of no avail as long as the city debt is exchangeable for stock). 3d. The issue of mortgage bonds authorized by section 7 of the charter. By this section the Company to obtain the funds necessary to extend and improve the works, is authorized, with the consent of the city, first, obtained to issue three million dollars of bonds, secured by mortgage on the entire works, but after the bonds are executed, no bond can be sold without the terms of sale are approved by the city—the proceeds to be used *only* for the improvement of the works and to increase water supply.

The Water Works Company was organized under this charter, a corporation whose whole capital stock is paid up in surrendered obligations of the city. Not one dollar of cash came to its treasury from stock subscription. Its obligation to repair and extend its works could only be carried out by effecting a loan on its mortgage bonds. In the first stage of its existence, the city demanded and received six hundred and six thousand six hundred dollars of the capital stock in lieu of Water Works bonds issued to the Commercial Bank for the purchase of the works in 1868, and retired either by payment or refunding, with a right not only to full equal dividends on the stock, but to the appointment of *four* of the seven directors in the first stage or period of the corporate existence of the new company, and *three* of the seven directors afterwards.

By the terms of the charter, it is in the power of the city to divest itself of every share of its stock by exchange for the bonded or floating debt of the city, and yet hold its three directors in the board, after it has ceased to own a single share of stock

The scheme was a device to dispose of the plant of the existing water works as acquired from the Commercial Bank, together with the exclusive right to carry on the works for fifty years in exchange for a portion of the debt of a practically bankrupt city—"a new way to pay old debts."

The only possible consideration which could induce a holder of the bonds of the city to surrender and exchange his interest pay-

ing bond for a certificate of stock, was the exclusive feature of the grant in the charter.

The only reservation or exception to the exclusive right for fifty years is contained in the 18th section of the charter:

"SEC 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the privilege of laying pipes to the river, exclusively for his own or their own use."

By an act, approved February 26th, 1878, the charter was so amended as to take away the right of the city to vote its stock at election of directors, but the charter was not otherwise changed in any manner material to any question involved in this cause. (The amendatory act is given in full in the appendix.)

The bill sets forth directly and by reference to the charter, all of the above features of the charter avers that the City of New Orleans accepted and availed itself of the legislation to discharge a large portion of its debt. That at the time the city was overburdened with both bonded and floating debt. That the city subscribed for the amount of the capital stock of said Water Works Company, equal to the amount of Water Works bonds paid or extinguished by refunding by the city, by exchange for other bonds amounting to $606,600. That the subscribers to said stock other than the city of New Orleans, acquired their stock full paid by the surrender to the city of the bonds of the city, to the amount of the par value of the stock, dollar for dollar, on or about the tenth day of March, 1878, and that the city of New Orleans, acting under the authority of this legislation took the proceedings and performed the acts necessary to complete the organization of said corporation. That during the month of March, 1878, this organization was completed, and the Water Works Company, as a company, accepted the terms and conditions of the charter, accepting the shares of water works stock in full payment of the debt surrendered; that, as provided in the charter, by direction of the legislative branch of the city government, the Mayor of the city made full and complete transfer of all of the property in the water works, held and owned by the

city, over to the Water Works Company (a copy of the act of transfer is in the record, page 18), with full warranty, having all of the effect and legal import of warranty in such cases as established by the laws of Louisiana.

That the Company accepted the transfer and assumed all of the obligations contained in the charter; that amongst the obligation assumed, was the obligation to extend and improve the works and machinery, as required by the charter; that by the terms of the charter the Company was without funds, its capital stock being in part a donation to the city of $606,600 in full paid stock, and all of the other shares representing the same nominal value of city obligations surrendered and cancelled before delivery of certificates of stock to the subscribers.

That in order to obtain the funds to extend the works the Water Works Company was compelled to avail itself of the authority to mortgage its works and franchises; that with the assent of the city, as required by the charter, the Company issued five hundred thousand dollars in mortgage bonds, secured by mortgage of said property and franchise; that all of said bonds were sold and disposed of to third persons, on terms consented to by the city, and are now out and unpaid.

That the Company would have been unable to place the bonds or dispose of them, or borrow money, nor would the shareholders in said Company have exchanged their obligations of the city for shares of stock in the Company, had not they and the public firmly believed that amongst the rights granted and exchanged for said surrendered evidences of debt of the city was an exclusive right to furnish the water supply for the city and its inhabitants for the period of fifty years, and that there would be no fraudulent attempt either on the part of the State or city, to impair or defeat the grant for the full term of fifty years, as granted.

That the grant of property in the water works, burdened with the obligation to improve and extend the works, as required by the charter, without the exclusive privilege for fifty years, is not equal to the value of the evidences of debt surrendered in exchange, but is comparatively worthless.

That the city observed good faith and did not attempt to inter-

fere with the right of the Company, as granted, until after the adoption of a new constitution of Louisiana in 1879.

That the city of New Orleans construes the 258th article of the Constitution of 1879, which, after saving right of action, etc., contains the following proviso: "*But the monopoly features in the charter of any corporation now existing in this State, save such as may be contained in charters of railroad companies, are hereby abolished,*" not only as having destroyed the exclusive privileges of the Water Works Company, but as relieving it of all of the obligations of common honesty and its written and sealed warranty in its deed of conveyance to the Company; and further, that under this section of this constitutional proviso, the city had acquired the legal right to confiscate the stock in the hands of the shareholders, notwithstanding the fact that every dollar in the shares represents a dollar of city indebtedness absolutely paid and extinguished by the shareholders

That immediately after the adoption of the Constitution of 1879, the city commenced an attack upon the Water Works Company by granting rights to persons not owning property contiguous to the Mississippi river, to lay down pipes from the river to their premises, and provide their own water supply to the exclusion of the Water Works Company.

That on the 16th of November, 1882, the City Council, with the approval of the Mayor, adopted and promulgated an ordinance giving to the defendant, Robert E. Rivers, as lessee of the St. Charles Hotel, in the city of New Orleans, "*the right of way and privilege to lay a water pipe from the Mississippi river, at any point opposite to the head of Common or Gravier streets, through either of these streets, to said hotel, on front and side streets, with all needed attachments and appurtenances, and to distribute said water through said hotel as said R. E. Rivers, as lessee, may desire.*" * * Rec. 11.

That the St. Charles Hotel is a very large institution, and accommodates a large number of guests and patrons, and is a large consumer of water, and not "contiguous" to the river; a large number of streets and block not owned by the proprietors or lessees of the hotel intervening between the hotel and the river. That prior to the date of the ordinance, the Water Works Company supplied the hotel with water from its mains at a profit to

the company and its shareholders; that Rivers, the defendant, threatens, and unless restrained by legal process, will lay the pipe and cut off the complainant from all future profits from water supply to the hotel premises. That if the defendant is permitted to lay the pipe and provide in that manner the water supply for the hotel, the complainant will be damaged in loss of profits more than ten thousand dollars.

The complainant avers that the grant of exclusive privileges for fifty years was the chief element of consideration, moving the shareholders to surrender their money obligations of the city in exchange for stock. That the charter contains a solemn contract protected by the Constitution of the United States. That the provision of the Constitution of 1879, and the ordinance of the city, by which it is claimed that the monopoly feature of the Water Works Company charter is repealed or eliminated from the contract, are void for repugnance to the Federal Constitution and confer no right on the defendant. That the ordinance is also void as a breach of the special and particular warranty in the notarial act of conveyance from the city to the Water Works Company; and prays for a perpetual injunction restraining the defendant from laying the pipe or claiming any right against the complainant by reason of anything contained in the ordinance, and from laying the pipe from the river.

To this bill the defendant demurred, assigning three grounds of demurrer.

1st.

That the court was without jurisdiction *ratione persona* by reason of the citizenship and residence of the parties.

2d.

That there is no jurisdiction *ratione materiæ* "that the matter in dispute, as appears upon the face of the plaintiff's bill, is not sufficient to give this new court jurisdiction." (This ground was argued in the court below to mean, as it probably was intended to mean, that jurisdiction *ratione materiæ* does not appear on the face of the bill.)

3d.

Want of equity in the bill.

The Circuit Court justly overruled the first and second assigned grounds of demurrer, but on its construction of the import and doctrine laid down in *Butchers' Union Co vs. Crescent City Live Stock Landing and Slaughter-house Co.*, 111 *U. S.* 746, dismissed the bill for want of equity.

The demurrer was twice argued, after the first trial and, while under advisement, the decision of this court in the Slaughter-house case, above cited, was rendered, and the circuit judge ordered the case back onto the docket for re-argument before both judges, sitting together. Both judges putting such construction upon the opinion in the Slaughter-house case as to concur in dismissing the bill for want of equity, but with expressed reluctance. (Rec. pp. 17-23).

Assignment of Error.

The court erred in sustaining the demurrer and dismissing the bill.

The first and second grounds of demurrer are frivolous. That the court has jurisdiction *ratione materiæ* is settled beyond dispute, by the fact that this Court entertained jurisdiction in Butchers' Union Slaughter-house and Live Stock Landing Company vs. Crescent City Live Stock Landing and Slaughter-house Company, 111 U. S., 746.

The third ground of demurrer, want of equity in the bill, is the only litigated question in the cause, and presents but one single question of law.

That question is narrow. Does the charter of the New Orleans Water Works Company embody or contain a contract between the State and the corporation or its share-holders, or between individuals, irrepealable without the consent of all parties to the contract, by reason of the prohibition contained in the Federal constitution, prohibiting the State from adopting any "law impairing the obligation of contracts?"

The charter of the water works contains and embodies a contract, the terms of which cannot be broken by the State, without a result so extraordinary, that it is not severity to denominate the breach dishonesty.

The usual consideration of contracts contained in charters of

private corporations, is some indirect or incidental general avowed or conjectured public benefit to flow to the people of the state, or of some locality in the state from the operations of the corporation, or the completed public work or improvement to be constructed or fostered by the corporation.

In the case at bar, the consideration paid for the franchise, granted, the right to furnish public water supply to the city of New Orleans, was the full estimated cash value of the franchise. The State bargained with greed for its motto and rule of conduct. The terms of its proposition and contract were and are: you as individuals pay or give the city of New Orleans the means to pay two million dollars of its debts and obligations to pay, and the State and city of New Orleans will sell and deliver to you specific charter existence in which we will vest the property, pipes, mains and machinery now used to supply the city with water, and the exclusive franchise by which your chartered corporation shall hold for fifty years the exclusive right to supply the city and the inhabitants thereof with water, through the instrumentality of a system of public water works, subject only to the condition that you enlarge the present capacity of the existing works as sold you, as provided in the charter, and furnish free of charge, water for the extinguishment of fires, cleansing streets, etc.

It cannot be questioned that all of the features of hard bargaining are present in this contract, unrelieved by a gleam of donation.

The bargain is a contract in which the State is the obligor and grantor, demanding full value for the thing granted. The contract is part of a public statute, "the express written will of the Legislature rendered authentic by certain prescribed forms and solemnities." The terms were accepted by the holders of Water Works bonds; the full price demanded for the franchise was paid by the shareholders. These bonds are in the hands of the debtor, cancelled and forever extinguished.

If the demurrer, for want of equity, is well taken, all of these surrendered bonds are "abolished" by surrender. The commodity purchased with the bonds is also "abolished" by a single sentence in Art. 258, of the Constitution of Louisiana adopted two years

after this contract was made and accepted, and the municipal bonds surrendered and "abolished."

Art. 258. * * "*But the monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby abolished.*"

If the demurrer is well taken, the charter of the water works is repealable, because the contract of the State in the charter is the contract of an unrepresented minor, willing and authorized to plead infancy as a defense against all of its obligations, even for the purchase of "necessaries fitting to its station" States should pass under guardianship, taking authority from some high interstate Orphans' Court. Pleading the baby act should be regulated by law, made honest by statute.

The demurrer is not well taken and should have been overruled.

The Legislature that adopted the legislation and made the contract involved in the charter of the Water Works Company on the 31st of March, 1877, derived its authority from the Constitution of 1868, and had no constitutional restraint upon its power to grant exclusive franchises or monopolies. Its power to legislate on the subject of monopolies was, by the organic law, supreme. If restrained in this particular, the restraint came not from the restraint put upon its action by any written law or constitution, but from some all-pervading mysterious pre-existing unwritten law, pervading space before government was invented, and beyond the reach of possible modification or repeal by the most potent and best directed legislative energy. Supreme above human power and will, the existence of which destroys all hope of absolute liberty and freedom of the human race under any form of human government. A power and law which, if it has any existence in fact, existed before government, and will survive the burial of the last national compact in the future, is coeval with the birth of the planet, to cease only when the planet ceases to exist. A most wonderful power, for which no better name has been so far framed than "*that well known but undefined power called the police power.*"

The Supreme Court of Louisiana, in the cases appealed to the Supreme Court of the United States and heard and affirmed in

this Court under the title, Slaughter-house Cases, 16 Wall., 36, decided that, under the Constitution of 1868, the Legislature *had* authority to establish and grant exclusive privileges and vest a corporation with monopoly. This Court, in its opinion, while not reviewing the question whether the Legislature possessed the power to grant the franchise determining that question concluded by the judgment of the State Court, decided that the power of the State Legislature to vest a monopoly in the Slaughter-house Company and grant privileges which come within the definition of monopoly, and to deny the same privileges to other persons, was complete, unless restrained by the Constitution of the State or the Constitution of the United States, that there was no such restraint in the Federal Constitution.

In *Butchers' Union Slaughter-house and Live Stock Landing Company vs. Crescent City Live Stock Landing and Slaughter-house Company*, 111 U. S. 746, this court considering the same statute, declared that the Legislature, under the Constitution of 1868, had full power to grant the charter to the Crescent City Company; that the exclusive right and monopoly for twenty-five years, created in the act, was a valuable thing; that the acceptance of the charter by the Company constituted a statutory contract which would have been protected by section 10, of the Federal Constitution, but for the fact that there existed a stratum of law lying above the authority of the Legislature the State and the Federal Constitution operative in all cases where public *health* and *morals* are concerned.

To say that delegation of police power to corporations is repealable, or can be recalled only where public *health* or public *morals* are concerned, is to define or declare no definite rule of decision. Disputes and contentions in respect of what constitutes or concerns public health, are and always have been severe, acrimonious and endless. Every Board of Health. Nearly every medical man in the country has a different standard and different plan for its protection—conditions which one class of contestants insist will breed pestilence, another class claim to be indispensable to public health. One set of experts insist that leprosy is contagious, that lepers should be excluded from our boundaries; another class believe it non-contagious, and the ex-

clusion of lepers uncivilized and inhuman barbarity. The same is true of public morals. Mormons believe polygamy virtue, the balance of the nation believe it felony or crime. Until police power is defined with accuracy, as each case arises, courts must *legislate* their way to judgment.

Assuming it to be beyond dispute that the water works charter contains a legislative contract, does the franchise granted, or rather sold to the Company, belong to, or is it included in the "undefined" catalogue of police powers which cannot be conveyed away by the State, beyond recall, at its will?

The most pernicious result of the doctrine that States are in a perpetual condition of infancy, because of the supreme domination of that fragment of government, the "police power" is that while the doctrine continues in force, courts must legislate. No Legislature has attempted to define the limits of this "undefinable power." All courts agree that it cannot be defined. If "police power" is to be used to demolish or "abolish" contract obligations, it is not enough for courts to say the power is undefined or "undefinable," it *must be defined and made definite.* The fact that any power of government is "undefinable," creates great suspicion of its existence as a separate, distinct power, distinguishable from the mass of general power.

Art. 258 of the Louisiana Constitution, is a statute or *law* within the meaning of the Federal Constitution, prohibiting States passing laws impairing the obligation of contracts. This was settled in Railroad Company vs. McClure, 10 Wall., 511. Justice Clifford in Miller vs. The State, 15 Wall., 488, as the organ of the Court, says: "Corporate franchises granted to private corporations, if "duly accepted by the corporators, partake of the nature of legal "estates, and the grant under such circumstances, if it be abso- "lute in its terms and without any condition or reservation im- "porting a different intent, becomes a contract within the protec- "tion of that clause of the Constitution which ordains that no "State shall pass any law impairing the obligation of contracts. "Charters of private corporations are regarded as executed con- "tracts between the State and the corporation, and the rule is "well settled that the legislature, if the charter does not con- "tain any reservation or other provision modifying or limiting the

"nature of the contract, cannot repeal, impair or alter such a "charter against the consent or without the default of the cor- "poration judicially ascertained and declared."

In the water works charter, the only provision which can be construed to contain any restriction of the exclusive franchise for fifty years, is in the 18th section:

"*Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the privilege of laying pipes to the river, exclusively for his own or their own use."

Whatever "*person or persons contiguous to the river*" may mean, if a fair construction is persons possessing or owning real estate touching the river, holding by a title warranting possession, and that is a literal construction, the section it certainly reserves to the Legislature no right of repeal, alteration or modification, nor is the construction or meaning of this section in controversy in this action, for the bill as dismissed contains the averment that the property of defendant *is not contiguous to the river.*

From 1868 up to the adoption of the Constitution of 1879, there was no act of the Legislature or constitutional provision reserving to the Legislature any right to alter or modify the conditions or terms of the charter of any private corporation, without the consent of the corporation. The suggestion of Judge Story in the Dartmouth College case had been unheeded by the Legislature and the Constitutional Conventions of the State.

It cannot be disputed that the Water Works Company charter created a private corporation, or that the corporation *purchased* the exclusive franchise of furnishing water supply to the city and its inhabitants, at least all water brought into the city by any system of water works, through mains, pipes and conduits for fifty years, nor can it be contended that the grant of right to non-contiguous possessors of property within the city of the privilege to use the streets, to lay down pipes to the river and pump water for their own supply and use, is destructive, if not the destruction of the exclusive right granted the Company.

In *Green vs. Biddle*, 8 *Wheat.* 1, it was settled that a contract to which a State is party, is within the protection of the constitution; "that the invalidity of a State law as impairing the obli-

gation of contracts, does not depend upon the extent of the change which the supposed law effects in the contract. If the effect is even minute, even apparently immaterial, the obligation of the contract is impaired."

The entire line of decisions of this court, on the effect of alteration of statutes, regulating remedies for enforcement of contracts and obligations, rest upon the same doctrine.

The effect of the 258th article of the Louisiana Constitution of 1879, if it had the effect to "abolish" any part of the charter contract of the Water Works Company, has the effect to confiscate the entire cash consideration paid for the exclusive franchise of fifty years, without any power of repeal or alteration having been reserved in the grant.

The doctrine in the line of cases, *Miller vs. The State*, 15 *Wall.* 498; *Holyoke Company vs. Lyman*, 15 *Wall.* 500; *Tomlinson vs. Jessup*, 15 *Wall.* 459; *Mann vs. Illinois*, 94 *U. S.* 118; *Shields vs. Ohio*, 95 *U. S.* 324; *Railroad Company vs. Maine*, 96 *U. S.* 510; *The Sinking Fund Cases*, 99 *U. S.* 700; *Spring Valley Water Works vs. Schattler*, 110 *U. S.* 347, seems to be that where States, either in their constitutions, or by act of Legislature, have reserved the right to repeal, alter or amend the charters of private corporations the right to *alter* is *part* of the contract in all charters granted *subsequent* to the reservation, leaving the State free to change the contract at will and without any new consent by the corporation, because it is said the corporation gave standing consent to such alteration, when it accepted the charter. To the end that this rule may not warrant dishonesty and the too liberal confiscation of vested property and rights, the doctrine seems subjected to restriction and limitation to this extent: "*The alterations must be reasonable. They must be made in good faith, and be consistent with the object and scope of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration.*" 95 U. S., 324.

Why, is not clear, the State it is claimed, reserved the right to destroy the life of the corporation, to strangle it to death at will, as part of the original contract. Why should it be restrained to part performance to partial destruction? What is "*reasonable?*" What is "*good faith?* What is "*consistent with*

the object and scope of the act of incorporation?" What is "*sheer oppression?*" What is "*wrong?*" Not a question of *law*, but questions of *fact* to be solved and found as *facts* by this Court. Would it not be more natural to leave the entire matter to the state? No line of judicial decisions ever unsettled, values to such extent or excited so much debate among lawyers.

Whatever the correct limitation of the reserved power of alteration may be, it is clear that the State of Louisiana, in the grant of corporate power and franchise to the Water Works Company, tendered no condition of reserved right to alter or amend as a condition of the contract in the shape of any pre-existing provision of its Constitution or act of its Legislature.

But suppose the State had reserved the power in the most general and enlarged form, could the State lawfully "abolish" the fifty years' exclusive franchise without violating the Federal Constitution? Was the "abolition" *reasonable?*" was it "*good faith?*" Was it "*consistent with the object and scope of the act of incorporation?*" Was it "*sheer oppression and wrong?*" All of these questions are of course questions of *fact*, not law, (if we concede any right to alter.)

The bill having been dismissed on demurrer, all facts well pleaded, together with all reasonable intendments, are beyond controversy and dispute as facts.

The fact then is the shareholders *paid* for the fifty years' franchise in money or its equivalent, paying the full cash value of the franchise purchased. The bill avers (Record p. 7, folio 21):

"And your orator further shows unto your Honors, that your "orator, the said New Orleans Water Works Company, has in "all things acted in good faith; that it accepted the terms and "conditions of said act of Legislature only after having obtained "full consent of the city of New Orleans thereto, as hereinbefore "set forth, and that had your orator not supposed that your ora-"tor had thereby acquired and obtained the full and exclusive "right and privilege of supplying the city of New Orleans with "water, by a system of public water works, to the exclusion of all "other means and sources of supply, through pipes or conduits "brought into the said city, your orator would never have en-"tered into said engagement, and would not, nor would the sub-

" scribers thereto have accepted the terms and conditions of said " act, and surrendered and given up to the city of New Orleans " for cancellation the said Water Works bonds and obligations " of the said city of New Orleans, so by said subscribers and " shareholders given up to said city of New Orleans in exchange " for their said shares of said Water Works stock," was it "*reasonable*" to condemn and confiscate this stock in the hands of those who purchased paying full value? Was it "good faith?" What is that to relieve the action of the State from the charge of "sheer oppression?" Argument is useless. The market value of the Water Works stock while both city and State kept faith, and while the exclusive franchise was not attacked or questioned, never equalled the market value of municipal bonds of the same class unconverted into stock.

Was the "alteration" "*consistent with the object and scope of the act of incorporation?*" The object and scope of the charter was double, first, to utilize the water works owned by the city to pay and discharge a large portion of the public or municipal debt by exchange; second, to effect the enlargement of the means of supply of water and obtain also a large supply for extinguishment of fires and other public municipal purposes free of expense to the city. How could either of these objects be advanced by confiscating the price paid by the corporation for the franchise and strangling the franchise itself, leaving the water works stranded without cash, capital, credit or the source of credit upon which it can predicate loans or borrow money in the market.

Another purpose of this act was to secure the cancellation of the outstanding bonds and obligations of the city, the payment of a public debt by exchange for property of value Is it consistent with any honest purpose or dealing to effect the exchange, secure the payment of the debt, and then condemn and destroy the property given in exchange.

It was insisted successfully in the Circuit Court, upon the authority of *Butchers' Union Slaughter-house and Live Stock Landing Company vs. Crescent City Live Stock Landing and Slaughter-house Company*, 111 *U. S.*, 746, that despite the provision in the Federal Constitution, the State could recall its solemn obligation and grant, and confiscate the price and consideration paid and received,

because the shareholders in the Water Works Company have unwittingly paid their money for the purchase of a fragment of the "police power" of the State, said to be a commodity which the State can sell for a money consideration; and having received the price demanded and appropriated it, recall the grant without the restoration of the price demanded and received for the grant. We do not understand the case referred to as warranting any such doctrine.

That the charter of the New Orleans Water Works Company is a formal contract is settled by the entire line of decisions in this Court from Fletcher vs. Peck, 6th Cranch, 87, 133, decided in 1810, down to Butchers' Union Company vs. Crescent City Company, 111 U. S., 746, decided in 1884.

In Fletcher vs. Peck, it was settled beyond subsequent dispute that the provision of the Federal Constitution protects from violation the contracts of States entered into by the State, equally with contracts entered into between private individuals. In *Green vs. Biddle*, 8 *Wheaton*, 1, it was settled that compacts between two several States were in like manner protected. The same doctrine is stated in Cooley's Constitutional Limitation, 273 et seq. In *the Slaughter-house cases*, 16 *Wall.*, 36, and in *Butchers' Union Company vs. Crescent City Company*, 111 *U. S.*, 746, it was settled that it is within the power of the Legislature of a State to contract and confer for a consideration, exclusive franchises in the nature of a monopoly involving the so-called "police power" where there was no restriction in the State Constitution, that such grant is valid, at least until recalled or revoked.

Can the State of Louisiana recall and revoke the franchises granted to the Water Works Company, without the consent of the shareholders?

If the State had power at the time of the grant, or has acquired power since that time to "abolish" the exclusive privileges granted the Water Works Company, can it "abolish" without first making return of the price paid for the franchise, or without full indemnity for the loss resulting to the shareholders from the "abolition?"

It was claimed in the Circuit Court that the State could "abol-

ish" franchises granted, because the right or duty (whichever it may be) to furnish water supply in cities or towns, or to the inhabitants thereof, is a part of this peculiar fraction of the political power of States called the "police power."

If the doctrine of the Dartmouth College case is to yield where police power is involved, it is certainly of the utmost importance to ascertain and find the exact limit and boundary of this extraordinary element of government and fraction of its powers.

So far, there has been no definition prescribing the exact limits of "police power." It has often been adjudicated to be *undefinable*. The books and written decisions of courts are replete with staggering, absurd attempts at definition. In Cooley's Constitutional Limitations, p 572, the following attempt is made: "The "police power of a State in a comprehensive sense, embraces its "system of internal regulation by which it is said, not only to "preserve the public order, and to prevent offences against the "State, but also to establish, for the intercourse of citizen with "citizen, those rules of good manners and good neighborhood which "are calculated to prevent a conflict of rights and to insure to each "the uninterrupted enjoyment of his own so far as is reasonably "consistent with the like enjoyment of rights by others."

Has representative republican or conventional government a single power or duty not included in Cooley's definition of police power? Why did he not attempt to define the boundary of police power by a definition of the *residuum* of power left in the State *after deducting "police power" from the mass.* It would have been more simple and satisfactory.

Blackstone (*4th Commentaries*, 162), defines "police power" as "The due, regular and domestic order of the Kingdom, whereby "the inhabitants of a State like the members of a well governed "family, are bound to conform their general behavior to the rules "of propriety, good neighborhood and good manners, and to be "decent, industrious and inoffensive in their respective stations."

This definition is also a complete roster of the powers and duties of a State in the management of its internal affairs, and seems to comprise the entire catalogue of duty, and administration springing from autonomy. There is no *residuum* of power left or necessary under any form of government. The elemental

form of government was the family, conceding authority to its paternal or maternal head, conceding nothing more than the above list of governmental powers.

Chief Justice Shaw also made an effort to define police power in *Commonwealth vs. Alger*, 7th *Cushing*, 84. "The power we "allude to is rather the police power; is the power vested in the "Legislature by the Constitution to make, ordain and establish "*all manner of wholesome and reasonable laws, statutes and ordi-* "*nances*, either with penalties or without, not repugnant to the "Constitution, as they shall adjudge to be for the good and wel- "fare of the Commonwealth and the subjects of the same. It is "much easier to present and realize the existence and sources of "this power than to mark its boundaries, or prescribe the limits "of its exercise."

Justice Shaw seems to have avoided the falacy common to other definitions. He did not fall into the error of tracing the source of police power in Republican States, *back beyond the convention out of which autonomy sprang*, and class it as a power existing in space not only older than the convention out of which government sprang, but *beyond the reach of all convention.*

Yet if we subtract from the grand total of powers vested in a government based upon convention republican in form, his enumeration of "police powers," what is left as a *residuum*. Nero and the Czar of the Russias never claimed more power, acting of course upon their own definition of what constitutes the best welfare of the subject.

Chief Justice Redfield, in *Clark vs. Railroad Company*, 27 *Vermont*, 149, without attempting to exactly define the power, attempts to fix its boundaries and define its extent and office in government, declares: "This police power of the State extends to "the protection of lives, limbs, health, comfort and quiet of all per- "sons and the protection of all property within the State. * * "* * By this general police power of the State, persons and "property are subjected to all kinds of restraints and burdens in "order to secure the general comfort, health and prosperity of "the State."

Here again, we have a full list of all the powers that a free government can possess. To yield government more would establish

tyranny. Much confusion has arisen from an attempt to subdivide so-called "police power," and to describe it as dual. One branch is said to affect the use and enjoyment of property. The other is said to affect only the freedom of action of the individual as subject or citizen. The police power, if it exist at all as a separate element of government before convention, is and must be a unit, is simply the power to restrain the individual as an individual, and can only operate on him through *force*, or the right to resort to force, to compel obedience. The power to restrain the individual in the reckless, unwholesome or dangerous use of his real property, is the same, and none other than the power to restrain the same individual in the reckless, heedless or dangerous use of fire-arms. The police power acts upon the individual owner or possessor, and not upon the real estate or upon the fire-arm.

In the quotation from *2nd Kent's Commentary*, 340, embodied in the opinion of the Slaughter-house cases, 16 Wallace, Kent did not attempt any definition of police power as an element of government, but simply alluded to its operation and restraint upon the free use of property, or upon the individual in the exercise of any vocation liable to affect public health.

In *United States vs. Cruikshank*, 92 *U. S.* 542, it became necessary for this court to define with particular exactness the relation of the citizen to the political community, State and Federal, and the entire extent and source of power residing in the political community, and defined that relation as follows: "Citizens are "the members of the political community to which they belong. "They are the people who compose the community and who in their "associated capacity have established or submitted themselves "to the dominion of a government, for the promotion of their "general welfare and the protection of their individual as well "as their collective rights. In the formation of a government "the people may confer upon it such powers as they choose. "The government, when so formed, may, when called upon, "exercise all of the powers it has, for the protection of the "rights of its citizens and the people within its jurisdiction, "but it can exercise no other."

That is, all powers vested in the government are the result of *convention and grant*, not in fact by *the people*, but by a *majority* of the people dominating the minority where the consent is not unanimous. The power described is the power to police community and enforce police regulations of restraint by force, if necessary, the power emanating, not from the entire people constituting the community, but assented to by a majority willing to enforce obedience on the part of the minority *by force if necessary.*

The full and exact legal definition and measure of police power existing in government, Republican and conventional in form, can only be that measure of restraint of the full natural liberty which the individual possessed as an individual in a state of nature *in the absence of all municipal law*, which the *majority* in numbers is willing to surrender to the government for themselves *voluntarily*, and compel the dissenting minority to surrender involuntarily, by force, if necessary. The extent of this surrender is the full measure of the power of government, and is nothing but the power to make police regulations, restraints for the strong and vicious in the form of municipal law to be enforced *by force, regulated in its use by restraint* of municipal law assented to by a majority of the people governed.

In the frame-work or structure of Republican government, there is no obligation or command laid upon the majority compelling that majority *to rule either wisely or well.* Republican conventional government, as a form of government, is a confessed failure if the majority have not the right to rule badly, even viciously, if it is the will of the majority. The power given is *the power to rule*, unburdened with the obligation to *rule well* or wisely. There can be found neither in the frame-work of the general government, or the structure of the government of any State, or in any theory of government republican in form, any tribunal branch or department of government possessing the right to condemn the majority *out of the right to rule*, in the event it rules badly or unwisely. There is no branch of any government within the United States possessed of power to adjudge and decree to a minority the right to rule by reason of a

default of the majority in framing or maintaining a *good government.*

We respectfully submit that no State, republican in form of government and resting upon conventional government, can take *any powers* excepting such as are contained in the articles of convention as written. It is extremely dangerous to undertake dealing with the so called police power as coming from any other source than convention, and must, if continued in, subvert or endanger all republican institutions.

It is now settled beyond dispute that the Federal government takes no powers from the common law of England; that its entire power was conveyed to it in the Constitution. The thirteen colonies existing at the time of the revolution, most of them during the revolution, when changing their form of government to fit their new condition of independence, adopted the common law of England as the basis of the law regulating private rights and property, except so far as the same was modified by their own legislation. The new States, excepting Louisiana, have in some form or other in their Constitutions or laws adopted the common law of England as a reserve of law to fall back upon in the absence of express statutes or regulations, making the common law, so far as it is a part of their system, only a part of the system by *legislative adoption.*

The same is not true of the State of Louisiana. Passing alternately from French to Spanish dominion, prior to its cession to the United States, it adopted the laws of neither nation, excepting so far as they were made applicable by military orders, and in the case of Spain by the rudely constructed colonial Code of Spain. After the cession of the territory to the United States, and its erection into a State, the people of Louisiana refused to incorporate any portion of the common law into its system, and attempted to codify for itself in the shape of statute law, an entire code of law.

Part of this code was borrowed in text from the Code Justinian, the "Code Napoleon," a portion of it from the Spanish Code, some portion of it from the Spanish Colonial Code, and some portion from a source unknown to man, adopting the system when framed as an entire system of laws or statutes constituting *the law of Louisiana*, and prohibiting the law of Spain and France not re-enacted from

being used as a rule of decision in the courts, for the very manifest reason that the laws both of France and Spain were the decrees and legislation of foreign powers.

The first article of the Civil Code of Louisiana, defines law as follows: "*Law is a solemn expression of legislative will.*" Article 8 of the same Code, declares, that "*a law can prescribe only for* "*the future.* It can have no retrospective operation, nor can it "impair contracts." Article 21: "In all civil matters where there "is no express law, the Judge is bound to proceed and decide ac- "cording to equity. To decide equitably, an appeal is to be made "to natural law and reason, or received usages where positive "law is silent."

The Supreme Court of the State has repeatedly decided that the phrase "*decide according to equity,*" contained in this article, does not allude to, or refer to the system of Equity obtaining in Great Britain, and that the "positive law" referred to in this article is the positive legislative enactment of the State of Louisiana. If it be insisted upon that as to the States other than Louisiana that having incorporated to a greater or less extent the common law of England in their system, the source of police power can be found in the common law so adopted, the reasoning has no force as to the State of Louisiana. Louisiana has never borrowed any system of law, nor any law not set forth in the text of its statutes and Constitution.

It is difficult to refer compulsory proceedings for the enforcement of debt, or obligations to pay money, to anything but the police power. It is the right to compel by force, under the direction of courts, the debtor to submit his person or property to the discharge of his obligations. The writ of *capias ad respondendum* and *capias ad satisfaciendum* interfere with and deprive the citizen of his liberty, because of a debt he owes another citizen. The writ of *fieri facias* authorizes the levy and forcible sale and transfer of the debtor's property, without his consent, for the satisfaction of an adjudged debt. This restraint of liberty, and forcible alienation of property, can certainly be considered nothing more than an exercise of police power put in motion to compel citizens to be honest in their contract relations with each other.

Why should remedies for collection of debts be irrepealable under any circumstances?

It is difficult indeed to find any authority of government that the State can assert by force, not of its police power. The entire office of government, so far as relate to its internal affairs, is to enforce peace and good order and compel the observance of contract obligations. In the event of disobedience, the resort is always to force.

The doctrine and reasoning in the case of the Butchers' Union Slaughter-house and Live Stock Landing Company vs. The Crescent City Live Stock Landing and Slaughter-house Company, reads strangely when compared with the actual state of facts leading to the establishment of the Crescent City Live Stock Landing and Slaughter-house Company and the grant of exclusive privileges to that corporation, as the facts are known to all inhabitants of New Orleans.

For many years prior to 1869, the slaughter of animals for food in the city was almost exclusively in the hands of the members of a quasi-corporation enjoying the somewhat anomalous and inharmonious title of "Butchers' Benevolent Union and Association." It suited their convenience, or will, to slaughter on and along the bank of the river, at or near the extreme upper portion of the city. All of the offal and rejected viscera of the animals being slaughtered daily, was cast into the river at a point above the in-take or supply pipe of the water works, supplying the city with water. By the action of the current of the river, this revolting and festering mass of offal was carried down along the entire city front, a distance of over six miles. By the natural action of the current and eddies, the raddle surrounding the in-take pipe of the water works was constantly clogged with festering, putrid masses of decaying and disgusting offal and decaying integuments and animal tissue. The piles along the water front and levee for its entire length were festooned with decaying entrails and putrid viscera in a state of advanced decomposition, burden-

ing the air with stench and gladdening the hearts of nothing living except, perhaps, turkey buzzards.

For a quarter of a century the inhabitants of the city had indured but protested against this pollution, but the butchers and their dependents constituted a large and important mass of voters of the city, making themselves necessary to the success of the dominant political party of the State, thereby successfully resisting all legislation or attempt at legislation looking to the abatement of the evil. It was not until 1868 when, by the revolution and changes made by war and reconstruction, that the political power and Legislature of the State passed into the hands of a party owing its power and success to a majority in the rural districts, and therefore indifferent, concerning the votes of the butchers and their dependents, that an opportunity came to abate this nuisance by legislation. The power of the butchers in the city and parish of Orleans, was sufficiently strong to exert a large influence upon local courts. Their voice was still potent in the election of all officers elected in the city of New Orleans, whether administrative or judicial. It was patent to the Legislature of 1869, that in effecting a removal of the butchers from the upper to the lower portion of the city, every possible element of resistance at the hands of the butchers would be encountered. That litigation and possibly force would be resorted to to prevent the change. The Legislature in the Slaughter-house Act, resorted to the only means by which the end could possibly be accomplished. It invested individuals as shareholders in a corporation with a pecuniary interest in the execution and enforcement of the law. Inspired by pecuniary interest and hope of profit, the shareholders of the Slaughter-house Company undertook the battle. A severe, expensive, and at the time, an extremely doubtful struggle insued. A whirlwind of litigation of the most expensive character sprang out of the first effort to carry the act into force. For months riot and bloodshed were iminent. Years passed before the struggle was concluded and the city rid of the danger and nuisance resulting from slaughtering on the upper portion of the city water front, and before the water supply of the city became free from fragments of putrid viscera drawn in through the raddle surrounding the in-take pipe of the works.

Beyond all question the result could have been accomplished in no other manner and through no other instrumentality. The shareholders of the Slaughter-house Company were compelled to expend enormous sums of money to carry on their contest, which much of the time, during its pendency, promised extremely doubtful success.

It was a clear and undoubted case where popular government, by reason of its inherent infirmity, was incompetent through the action of its officers to enforce an indispensable and necessary prohibition and police regulation, and where private individuals would never have undertaken the task, except on the faith of the promise that after the battle was won they should receive so much remuneration, reward and reimbursement as would come to them from the exclusive privilege and franchise phrased in the charter, to earn, which they had incurred immense expense and no small amount of personal risk and peril.

The State and city are to-day reaping immense advantages from the sacrifice and struggle of these shareholders, yet the shareholders are no better off than they would have been if they had never lent their money, expended their time, incurred the risk of loss and personal danger to accomplish for the State what the State was impotent to accomplish for itself.

The Circuit Court sitting in New Orleans doubtless fell into error in that case from too great familiarity with the real facts, or from too high appreciation of the improvement in conditions indispensable to public health wrought by the energy of the shareholders, or perhaps from too great apprehension of a relapse to the old nauseating condition of continuous peril to health from the pollution of both atmosphere and water supply.

Beyond all possible doubt, with the exception of the appellants in that case, there is not an inhabitant of the city who does not most sincerely regret that it fell to the lot and became the office of law, to strike with death the small remaining balance of the hard earned franchise of that company; that its contract found no protection in the Federal Constitution; that the new grant of unrestrained power and freedom to deal with all matters of public health, unrestrained by prior legislation now vested in the City Council, and the Legislature should bear its first fruit in the

practical abolition of both *ante-mortem* and *post-mortem* official inspection of animal food destined for consumption in the city.

We allude to this merely to show that if the "police power" is to be set up as a warrant for the breach of express contract covenants, it at least is a question of mixed fact and law to determine precisely when the doctrines can be safely applied. The measure of fact involved in the consideration and application of the rule to any particular case, should be more accurately, definitely and certainly defined, than any other rule of law likely to be invoked to destroy or eliminate conditions and substance from legislative grants. It is extremely dangerous to lay down or assert, as a general rule of law, that it is beyond the power of any State to call to its aid by solemn and good faith contract, the energy, money and assistance of its citizens to accomplish difficult and severely resisted changes in customs, or to prevent infractions of even public morals or public health.

We respectfully submit that a system of public water works consisting of mains and pipes for distribution, immense steam engines to transfer the water from its source to the place of distribution and maintain the pressure necessary for its distribution, cannot be classed or connected with the "police power" or machinery of any State or government, unless it be first determined that among the duties imposed upon government by the nature of government itself or pre-existing police power, is the duty to supply and furnish every city or town with a system of artificial water supply, and that this duty is inherent and elemental as a duty resting upon government, the failure to perform, which would be *default* on the part of the government.

It cannot be insisted that any such burden or obligation rests upon government. The most enlarged duty in respect of water supply bearing on government as a natural obligation, can be nothing more than the adoption and enforcement of such measures as will prevent the pollution of the *natural sources of water* supply. The natural sources and natural supply, of course, are rainfalls, streams, rivers and lakes, to which, perhaps, may be added a source of supply in a measure artificial resting upon

the right of the owner of realty to sink wells upon his own property.

It may be, and doubtless is, an appropriate and proper exercise of the power of government, and perhaps its duty, to make and enforce such ordinances and regulations in localities where people are aggregated in cities, as will prevent the pollution of these respective natural sources of water supply, but to go farther and say that when by reason of gravitation, or the necessities of commerce or manufactures, people become concentrated and aggregated in cities and towns, there immediately springs up an obligation on the government to supplant all these natural sources of water supply by a purely artificial substitute which can only be operated and kept in existence or operation by the expenditure of vast sums of money, adding to the government an obligation that only sprang into existence when art had so far advanced as to supply material and machinery necessary for the water distribution, and which must undergo constant modification as art advances, and more perfect, complete and expensive devices accomplishing better results, are planned, conceived or invented.

The Supreme Court of the State of Louisiana and the counsel in the case of *The New Orleans Water Works Company vs. Louisiana Sugar Refinery Company*, who has been permitted to intervene and file a brief in this case, seem to have abandoned the idea of defending the ordinances of the city granting the right to lay pipes to persons possessing property not *contiguous* to the Mississippi river and pump their own water supply, upon any peculiarity or feature of the "police power" of the State, or upon any right of repeal contained in the Constitution of 1879.

The brief and argument filed by the counsel of the Louisiana Sugar Refinery Company is but a rehash of the reasoning of the Supreme Court of the State in *Water Works Company vs. Sugar Refinery Company*, 35 *La. An*, 1111, now pending in this court on writ of error.

The opinion of the court in that case is a curious specimen of logic of the order used to justify the repudiation of a large portion of the public bonded debt of the State, and justify "remitting" to the

general treasury a special fund set apart to pay the interest due by the State.

That court does not attempt to rest its judgment on the effect of Art. 258 of the Constitution of 1879, but upon an astounding construction of the charter of the Water Works Company. The charter is declared to confer on the Water Works Company only the right to *sell water* to the inhabitants of the city, to be delivered through its pipes and mains; that despite the charter, any private person or corporation not possessing property *contiguous* to the river can obtain lawful right to lay pipes to the river, erect engines, and pump *their own supply* for their own purposes, provided the water pumped is not *sold*. That is to say the city can, if it sees fit, grant authority to *every* inhabitant of the city to lay a pipe to the river, pump his own supply, and leave the water works as the consideration for its payment of the city debt, the *sole privilege of providing gratuitously* a public water supply for public buildings, charitable institutions, extinguishment of fires and cleansing the streets.

If this reasoning be correct, all of the several inhabitants of the city can join in laying a common pipe to the river, establish a common pumping engine and plant, and so long as they only exact from each consumer no more than his *share* of the common expense and exact *no profit*, and *do not sell the water*, the entire source of revenue of the Water Works Company can be taken away, leaving the company only the burden and expense of providing a *public water supply* for *strictly public purposes without pay*, and this without doing violence to the terms of the water works charter. The reasoning proves too much, reaches too far, will compass results not consistent with integrity.

Applying the most severe rule ever applied to the construction of statutes granting exclusive privileges, what was the grant made the Water Works Company in its charter? The grant of exclusive franchise first appears in section 5 of the charter of 1877. The first grant is the privilege granted to the Commercial Bank in 1833.

"*That said water works shall own and possess the privileges acquired by the city of New Orleans from the Commercial Bank.*"

Sec. 4 of the Act incorporating the Commercial Bank, declares that the Bank, when incorporated, is "*to have forever the exclusive privilege from and after the passing of this Act of supplying the city and inhabitants of New Orleans and its faubourgs with water from the river Mississippi by means of pipes and conduits, and for erecting, constructing or working of any necessary engine.*"

Here was an exclusive grant of not only the right to supply water to the city and its inhabitants through the artificial agency of "pipes or conduits," but also the exclusive right of *erecting, constructing or working* of any necessary engine requisite to force water through its artificial "pipes or conduits."

This exclusive right, however, only attached to water pumped from the "river Mississippi." Water from any other source brought into the city and distributed through pipes or conduits did not trench upon the exclusive rights of the Commercial Bank or the city, its successor.

The charter of 1877, however, not only granted all rights that had been granted to the Commercial Bank, but a further grant in the following words (Sec. 5, Charter 1877):

"*That it shall have for fifty years from the passage of this act the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines, or machines for that purpose.*"

This grant is also exclusive for the term named, both as to the right to supply water through "pipes and conduits," *and* the *exclusive* right to construct and operate the "*necessary works or engines, or machines*" to take up the water and force it through mains to the place of delivery, and enlarges the grant given the Commercial Bank by attaching the privilege, not only to water taken from the Mississippi river, but to "*any other stream or river.*" The only reservation contained in this charter confirms the intention of the Legislature to make the grant exclusive. We refer to the reservation contained in the 18th section of the charter, enacting that nothing in the act shall be construed to prevent the City Council from granting to persons "contiguous" to the river, the privilege of laying pipes to the river, "*exclusively for his own*

or their own use." This reservation was an express restriction upon the city, and left it free only to act for those proprietors who, by reason of their property, possessed riparian rights springing from ownership of realty.

The right to lay pipes and mains under streets as well as the right to condemn property, are only *incidental grants to make the exclusive grant available.*

The grant cannot be subdivided nor construed to mean less that the exclusive right to use pipes, conduits, mains and pumping machinery as a means of diffusing water through the city to the exclusion of all persons, except such as own or possess realty "contiguous" to, or touching the river or source of supply.

The proposition contained in the opinion of the State Supreme Court and reiterated in the brief filed by the Sugar Refinery, to-wit: that the complainants' charter only conferred an exclusive right to *sell water* and *no exclusive right to lay pipes*, therefore, under the law of Louisiana, any inhabitant of the State of Louisiana has lawful right, with the consent of the city, to lay pipes to the river and pump his own supply, is not worthy of serious consideration. It is not an over-commendable or ingenious scheme of hair splitting, finding no excuse or apology in the legislation in question.

The process of reasoning called in as apology for this conclusion is, to say the least, unique.

We are told that by some law, *Roman* or *common*, or a mixture of both systems, running water is the common property of all persons, without regard to riparian ownership or possession. This proposition, as formulated, was never the law of England, or the common law. The rights of riparian owners, in all streams *not navigable* by common law, extend to the thread of the stream, including the right of fishery. The extent of the public interest and title in all navigable streams never was uncertain or disputed, but is not, as stated in the brief. The common law right of the public in streams, navigable or not navigable, is not in question in this case.

If the common law was involved, the answer to the position taken by the defendant in error is, even if the common law is as

contended for, there is no right secured to the public by common law invaded by the water works charter. Every citizen of the United States can draw water from the Mississippi river, along the entire water front of the city, by *any other instrumentality or device* than pipes and mains connected with pumping machinery, provided they commit no trespass on private property and violate no public ordinance of the city relating to its wharves and water front. If his property is so contiguous to the water as to give him riparian rights, he can obtain water for his own use *through pipes and mains connected with machinery and pumping engines* and devices.

The *common law is not involved* in this controversy. Aside from such laws of the Federal government having force *within* the State and the Constitution of the State itself, there is not a rule of law in force within the State of Louisiana, which *is not an act of the Legislature of the State subject, where private rights are not involved, to alteration, amendment or repeal, at the will of the Legislature.* It is to the Statutes of Louisiana alone that the defendant must look for the measure of right which the individual citizen or the public possess in running water, or in public or private water courses.

Counsel for appellee refers to Art. 450, 453 of the Louisiana Civil Code, in support of his alleged theory of the right of the public in public water courses and streams. The Supreme Court of the State in *Water Works Co. vs. Sugar Refinery*, 35 *An.* 1111, supplemented this list with Articles 455, 457, C. C., and refer to 14 La. An., 854; 32 An , 915. (Neither of the cases cited relate to riparian matters or to the construction of any of the articles of the Civil Code cited).

It is curious that Article 456 of the same Code was not cited.

"Art. 456. *The provisions of the ancient laws concerning the "distinction of things into things holy, sacred and religious, and the "nature and inalienability of these kind of things, are abolished, "and nothing prevents the corporations or congregations to which "these things belong from alienating them, provided it be done in the "manner and under the restrictions prescribed by their acts, of incor-"porations.*"

The statutes of Louisiana giving riparian rights and defining

the right of the public in public waters, are the articles of the Revised Civil Code, from Articles 450 to 458 inclusive. The above quoted Article 456 being one of the articles, as published and arranged in the series.

The most casual reading of the provisions of the Code must satisfy the court that no such right is given the public as is contended for by the State Supreme Court and the appellee.

But for the purpose of argument let it be conceded that this legislation has the effect contended for. The response is the general prior grant to the public *is nothing but an act of the Legislature* of the State *repealable* at the will of the Legislature. If the articles cited, or any other statute of the State are in conflict with any grant contained in the water works charter, the water works charter is the *last* expression of legislative will on the subject, and *repeals* all former legislation so far as it is in conflict with any specific grant contained in this charter. This result follows, of course, even if the charter had been silent on the subject, but it is *not silent* The original charter, as adopted in 1877, was amended by the act of February 26th, 1878. (See Appendix). The seventh section of this amendatory act enacts: "*That all laws and parts of laws contrary to the provisions "of this act, or in conflict therewith, are hereby repealed to the ex-"tent that they do conflict, and that this act shall take effect from "and after its passage.*"

Something better than repealed statutes is necessary to effect the *escheat* of our surrendered municipal bonds.

Boyd vs. Alabama, 94 *U. S.* 645; *Patterson vs. Kentucky*, 97 *U. S.* 501; *Beer Company vs. Massachusetts*, 97 *U. S.* 25; *Stone vs. Mississippi*, 101 *U. S.* 814, and *Butchers' Union vs. Crescent City Co.*, 111 *U. S.* 746, cited in intervenor's brief, relate entirely to the control of States over their internal police regulation, and are not pertinent in this case, unless the police power of the State is involved in this issue. We understand the court as intending restrict rather than enlarge the doctrine of right to repeal where police power is involved in the opinion in Butchers' Union vs. Crescent City Co., 111 U. S.

We respectfully submit that until it is established that it is one

of the duties resting upon government as an imperative obligation to provide cities and towns within its boundaries with *an artificial system of water supply*, in addition to those provided by nature, and until it is shown that the neglect of government to furnish such *artificial supply*, or plant necessary to furnish such supply, is *default* on the part of government, there can be no question of police power involved in the issues to be determined in this cause.

Spring Valley Water Works vs. Schottler, 110 *U. S.* 348, was cited and relied on by the appellee in the court below. We do not understand that case to determine anything beyond the fact that there was *enough* reserve power of alteration, amendment and repeal left in the State of California to make the modification of the *Spring Valley Water Works Company* charter legal, that had there been *no right of repeal, alteration or amendment reserved*, the decision would have been the other way. There *was no reserved power* in the State of Louisiana to modify the charter of the *New Orleans Water Works Company*, therefore, the reasoning in the *Spring Valley Water Works vs. Schottler*, is not applicable to this case.

We respectfully submit that the demurrer should have been overruled, the bill retained and the defendant compelled to answer. That the decree of the Circuit Court dismissing the bill is erroneous, and should be reversed.

All of which is respectfully submitted,

J. R. BECKWITH,

Of Counsel for Appellant.

APPENDIX.

EXTRA SESSION OF 1877.

No. 33.] AN ACT

To enable the City of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the "New Orleans Waterworks Company;" to authorize the said Company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of Waterworks bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the City of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That a corporation be, and the same is hereby created, to be styled "The New Orleans Waterworks Company," the capital stock whereof shall consist of two millions of dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

SEC. 2. *Be it further enacted, etc.*, That immediately after the organization of the said Waterworks Company, as hereinafter provided, it shall be required to issue to the City of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of Waterworks bonds which said city may have taken up heretofore and extinguished by payment, exchange or otherwise; and that the residue of said capital stock shall be reserved for the

benefit of all holders of Waterworks bonds, to the extent of the amount now outstanding, who may elect to avail themselves of the provisions of this act; and the said Waterworks Company shall issue to the said City of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred dollars of said Waterworks bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding Waterworks bonds for stock, as aforesaid, the City of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Waterworks Company, and shall, by advertisement for six months in two newspapers in the City of New Orleans and two newspapers in the City of New York, give notice that it will exchange said stock at par for said Waterworks bonds at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city, and in case any of the said bondholders shall fail or refuse to avail themselves of this act within one year from the formation of said company, the said City of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid.

SEC. 3. *Be it further enacted, etc.*, That the said Waterworks Company shall be organized by the Mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said Waterworks bonds, which shall have been extinguished by said city; and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the Administrator of Finance, the said subscribers shall assemble together, on a day to be named by the Mayor, and shall elect a

Board of Directors, to consist of seven persons, four of whom shall be designated by the Mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves: and the persons thus designated and elected shall constitute the first Board of Directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said Board shall elect one of their number as President.

SEC. 4. *Be it further enacted, etc.*, That as soon after the election of said Board of Directors as the City Council may determine, the Mayor of the city shall transfer, by notarial act, to said New Orleans Waterworks Company the Waterworks and all the property appurtenant thereto.

SEC. 5. *Be it further enacted, etc.*, That the said Waterworks Company shall own and possess the privileges acquired by the City of New Orleans from the Commercial Bank; that it shall have for fifty years from the passage of this act the exclusive privilege of supplying the City of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines, or machines for that purpose; that it may contract for, purchase or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city, or to distribute the same to the inhabitants of said city; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs, as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper, in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of conduits or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the City of New Orleans: *Provided*, the same shall not be an obstruction to commerce or free circulation; and also to have and use a common seal and alter the same at pleasure; to ordain and establish by-laws for its government and that of its

officers and employés, not repugnant to this Act and the Constitution of the State and of the United States, or the ordinances of the City of New Orleans

SEC. 6. *Be it further enacted, etc.*, That on the first Monday of July, eighteen hundred and seventy-eight, and annually thereafter, an election for directors of said company, after ten days' notice of the same and place of holding the same, shall be held, at which election there shall be elected four Directors by all the stockholders other than the City of New Orleans; and the Mayor of the city, the Administrator of Waterworks and Public Buildings and the Administrator of Finance of said city, shall be *ex-officio* Directors of said company; the said city, through its Mayor and Administrators, shall have the right to vote at the election of Directors, and at all meetings of said stockholders, in the same manner as any other stockholders. That at all elections and all meetings of stockholders each share of stock shall be entitled to one vote. The Directors elected shall serve for one year, and shall hold their offices until their successors are appointed; and no failure to elect Directors at the time designated, shall prevent the Board of Directors from fixing another day for holding the election; and in case of vacancy in the Board of Directors, occasioned by death, resignation or absence from the State, or other cause, the Board of Directors may fill such vacancy for the remainder of the year.

SEC. 7. *Be it further enacted, etc.*, That the stock owned by said City of New Orleans in said Waterworks Company, shall not be liable to seizure for the debts of said city.

SEC. 8. *Be it further enacted, etc.*, That the stock of said Waterworks Company may be increased to two millions of dollars, for the purpose of enabling said company to improve, enlarge and extend its works: *Provided*, that the new or increased stock shall be paid for in cash, or in work done for the company; and in case of non-payment of instalments on stock subscribed for, the same may be forfeited to the use of said company.

SEC. 9. *Be it further enacted, etc.*, That the Board of Directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works, and increasing the supply of

pure water; and to accomplish this purpose, the said Board of Directors are hereby authorized to issue the bonds of the company to an amount not exceeding two millions of dollars, in such sums, on such terms, and bearing such rate of interest as said Board may determine, and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchise to be a corporation, and said mortgage may include the property and franchises of said company, acquired or to be acquired, and the registration of said mortgage in the office of the Recorder of Mortgages for the Parish of Orleans, shall operate on the property and franchises of said company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it, without re inscription: *Provided, however*, that no bond shall be issued, or mortgages given, without the consent of the Council of the city of New Orleans, and said bond shall not be sold or disposed of except on such terms as shall be approved by said Council of said city.

SEC. 10. *Be it further enacted, etc.*, That said company shall not declare or pay any dividends, except in cash, and then only out of the net semi-annual or annual receipts, after payment of expenses of operation, and the interest on its bonded debt, nor shall any dividends be declared until the contemplated works are completed and in use.

SEC. 11. *Be it further enacted, etc.*, That the city of New Orleans shall be allowed to use water from the pipes and plugs of said company now laid, or hereafter to be laid, free of any charge, for the extinguishment of fires, cleansing of the streets, and for the use of all public buildings, public markets and charitable institutions, and that the said company shall place, free of any charge, whatever, two hydrants of the most approved construction in front of each square, where a main pipe shall be laid at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn for the extinguishment of fires, for watering the streets and cleansing the gutters, and for any other public purpose; that on the squares which do not front on the river the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners. It shall be

the duty of the said company, whenever main pipes shall be laid, to supply water for all the purposes herein mentioned at all times during the continuance of this charter; and in consideration thereof the franchises and property of said New Orleans Waterworks Company, used in accordance with this act, shall be exempt from taxation—State, municipal and parochial.

SEC. 12. *Be it further enacted, etc.*, That the said Waterworks Company shall have the right in the City of New Orleans and its suburbs and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water: *Provided*, that said streets shall not be obstructed longer than necessary for such purpose, or for making repairs, and that said streets shall be restored to the same condition they were in as soon as practicable, by the said company, under the supervision of the City Surveyor. In case the said Waterworks Company shall require any lot of ground in the City of New Orleans, or any lot of ground or quantity of land situated in any parish of this State, for the purpose of constructing reservoirs or other works, or for the purpose of laying pipes to conduct water to the City of New Orleans, and shall not be able to agree with the proprietor or proprietors of said lot of ground or land, the said company shall have power to cause the same to be expropriated in pursuance of the general laws on the subject of expropriation for works of public utility now in force, or which may hereafter be enacted, and if the object of said company be merely to lay pipes through a piece of land or lot of ground, the expropriation shall be confined merely to the servitude it may require, and not to the rights of absolute ownership.

SEC. 13. *Be it further enacted, etc.*, That the said Waterworks Company, immediately after its organization, shall proceed to the erection of new works and pipes sufficient in capacity to furnish a full and adequate supply of water, to be drawn from the Mississippi river, or elsewhere, as may be judged most expedient; that said new works and pipes shall be commenced within twelve months from the passage of this act, and shall be year by year completed, so that, within five years from the date of this act, they shall be completed so as to give an adequate supply of water to the people of the City of New Orleans, exclusive of the Fifth

District. If said work be not done as above prescribed, said corporation shall forfeit all exclusive privileges granted herein and the city shall have a right to contract with any one else for a supply of water as above provided, and to expropriate the property of the corporation hereby created. After the completion of the new works and pipes, the said company shall, from time to time, as the wants of the population may require, and when the estimated revenue on the cost of such extension shall equal ten per centum, extend their works throughout the entire limits of the city and suburbs, and any future extension of said city; and any failure by said Waterworks Company to comply with this provision shall work a forfeiture of this charter.

SEC. 14. *Be it further enacted, etc.*, That the City of New Orleans, through its Council, shall have authority to apply the stock subscribed for by said city, as herein provided, to the reduction of the bonded or floating debt of the said city, on such terms of adjustment as may be agreed upon between the City Council and the holders of such bonded or floating debt: *Provided*, said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the Council reserving the right to reject any and all bids.

SEC. 15. *Be it further enacted, etc.*, That the said Waterworks Company shall have the right to fix the rates of charges for water: *Provided*, that the net profits of the company shall not exceed ten per cent. per annum, and shall publish sworn annual statements of its business and condition; and that the City Council shall have the power to appoint a committee, of not less than five, who shall have access to the books of the said company, and make such extracts from the same as they may deem necessary, and in case the said profits shall exceed ten per cent., the City Council shall have the right to require said company to reduce the price of water in such manner, and in such a proportion, that the profits shall never exceed the above named rates: *And, provided further*, that the rates charged shall never exceed those now paid by the city, and in case said company shall refuse com-

pliance, the demand of said city may be enforced by a writ of mandamus.

SEC. 16. *Be it further enacted, etc.*, That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its suburbs, or shall change, alter, remove, injure or destroy any work or part of a work made by the said company, or cause to be made, for the purpose of introducing water into the City of New Orleans, under the authority of this act; or if any person shall alter, change, or pollute the water or stream which the said company shall hereafter introduce, or be preparing to introduce, such person or persons shall be indicted in the proper court for the trial of such offense, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offense, and imprisoned for a term not exceeding seven years, such fine to be paid and applied to the use of said company.

SEC 17. *Be it further enacted, etc.*, That until other works are constructed by which the present works may be dispensed with, the same shall remain under the control of the City Council, and the superintendence thereof remain in the hands of the Administrator of Waterworks and Public Buildings; but the said company shall be authorized to collect the revenues thereof and apply them to the expense of operating and extending the works. At the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be *ipso facto* extended for fifty years longer, but without any exclusive privilege or right to supply water, according to the provisions of the charter.

SEC. 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the privi-

lege of laying pipes to the river, exclusively for his own or their own use.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved March 31, 1877.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL. A. STRONG,
Secretary of State.

No. 43.] AN ACT

Relative to the Charter of the New Orleans Waterworks Company and amending an Act number Thirty-three of Extra Session of eighteen hundred and seventy-seven (1877), approved March 31st, 1877.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That, at the election to be held, on the first Monday of July, eighteen hundred and seventy-eight (1878,) and annually thereafter, for Directors of the New Orleans Waterworks Company, the stockholders of the said New Orleans Waterworks Company shall elect four Directors; but the city of New Orleans shall not vote at said elections, she being already fully represented, for the amount of her stock, by the Mayor of the city, the Administrator of Waterworks and Public Buildings, and by the Administrator of Finance, who are *ex-officio* Directors of said company.

SEC. 2. *Be it further enacted, etc.*, That section ten (10) of said Act Number Thirty-three (No. 33,) of Extra Session of the year eighteen hundred and seventy-seven (1877,) be amended and reenacted so as to read as follows: "That said company shall not declare or pay any dividends except in cash, and then only out of the net semi-annual or annual receipts after payment of expenses of operation, and gradual extension, and the interest on its bonded debt."

SEC. 3. *Be it further enacted, etc.*, That section seventeen (17)

of aforesaid Act be amended and re-enacted so as to read as follows: "That at the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be, *ipso facto*, extended for fifty years longer, but without any exclusive privilege or right to supply water according to the provisions of the charter."

SEC. 4. *Be it further enacted, etc.*, That the time allowed to the said New Orleans Waterworks Company to commence and proceed to the erection of new works and pipes, (as contemplated by said Act Number Thirty three,) (No. 33,) shall commence six months after the organization of said company, and not from the date of the passage of said act.

SEC. 5. *Be it further enacted, etc.*, That the full, complete and adequate supply of water referred to in section thirteen (13) of said Act No. 33, shall be so construed as to require a supply of water at the height of not less than fifteen (15) feet from the ground wherever the pipes of the Waterworks now exist.

SEC. 6. *Be it further enacted, etc.*, That the word "State" in section eleven (11) of said Act No. 33 of 1877, and in the last line thereof, be stricken out, so that the said company shall not be exempt from State taxation.

SEC. 7. *Be it further enacted, etc.*, That all laws or parts of laws contrary to the provisions of this Act, or in conflict therewith, are hereby repealed to the extent that they do conflict, and that this Act shall take effect from and after its passage.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved February 26, 1878.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL A. STRONG,
Secretary of State.

AN ACT

To incorporate the Commercial Bank of New Orleans.

Whereas, sundry inhabitants of the City of New Orleans have petitioned this General Assembly, setting forth that they are desirous of establishing a Company in the City of New Orleans, invested with banking privileges, and to be entitled the "Commercial Bank of New Orleans:" the chief object of which said Company, is to be the conveying of water from the river into the City of New Orleans and its faubourgs, and into the houses of its inhabitants. *And whereas*, the said object will greatly contribute to the security of the said City from fire, and to the health and convenience of the inhabitants, and the agricultural and commercial interests of this State may be greatly promoted by extending to said Company the privileges required, *therefore*,

* * * * * * * *

SECT. 4. *Be it further enacted*, &c., That all such persons as shall become subscribers to said company, their successors and assigns, shall be and are hereby created and made a corporation and body politic, by the name and style of the *Commercial Bank of New Orleans*, and by that name shall be and are hereby made capable in law, to have, hold, purchase, to receive in payment of debts, possess, enjoy, and retain, to them and their successors, property and estate of what nature, kind, or quality soever, or so far as is necessary to carry into complete effect the object of this charter, which is declared to be the furnishing of the city with good and wholesome water; and the same to alien, transfer and dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court or courts of record, or other place whatsoever; to have forever the exclusive privilege, from and after the passing of this act, of supplying the city and inhabitants of New Orleans and its faubourgs, with water from the river Mississippi, by means of pipes or conduits, and for erecting, constructing, or working of any necessary engine; and they may contract for, purchase or lease, the right to enter and pass through, from time to time, as occasion may require, any lands or grounds through which they may deem it necessary to convey the said water into said city and its fau-

bourgs; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the river from any place or places that they may deem fit, and to raise and construct such dykes, mounds, or reservoirs, as they may judge proper, for securing and conveying such supply of water, as aforesaid, to the said city and the faubourgs thereof; and to survey such lands as they may think proper, in order to ascertain the best mode of furnishing such supply, and to lay and place any number of conduits, pipes, and aqueducts, and to cleanse or repair the same, through or over any of the lands or streets of the city of New Orleans and its faubourgs; and also to have and use a common seal, and the same to break, alter and renew at pleasure; and also, through their president and directors, to ordain, establish, and put in execution, such bye-laws, ordinances, and regulations, as shall seem necessary and convenient for the government of said corporation, not being contrary to this act, nor to the constitution and laws of the United States, or of this State, or ordinances of the city council of New Orleans; and generally, to do and execute all such acts, matters and things, as to them shall or may appertain to do; subject, nevertheless, to the rules, regulations, restrictions, limitations and provisions hereinafter specified and declared. *Provided however*, that at any time after the expiration of thirty-five years from the passage of this act, it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans, the water works constructed by said company in virtue of this act—and said company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided.

* * * * * * * *

SECT. 11. *Be it further enacted, etc.*, That said company shall, within twelve months after the first election of directors, commence works, and commence to procure such materials, as may be necessary to enable them to furnish the inhabitants of the city of New Orleans and its faubourgs, with sufficient water from the river at all seasons of the year; and in order that the true intent and meaning of this act be strictly adhered to and complied with, and that the waterworks, contemplated to be constructed by said

company, be completed in the shortest time practicable, under all the circumstances, the sum of at least one hundred thousand dollars shall be expended, on the works aforesaid, annually, until the said company is in a situation to supply, and actually do supply, water to the greater part of the streets of the city proper, and the principal and most populous streets of the faubourgs—said expenditure to commence within one year after the passage of this act—so that the city of New Orleans and the faubourgs thereof, may be furnished with water in the streets, and such inhabitants may procure it by means of conduits or pipes, within their houses and lots, at a price to be regulated by the company: and should the said company fail or neglect either to commence or continue said works as aforesaid, then, and in such case, the charter now granted shall be wholly null and void; *provided, however*, that the net profits on the same shall not exceed an interest of fifteen per centum per annum, from the time of disbursements on said works; and at such times as dividends shall be declared by the bank, say semi-annually, the interest on the sum expended in constructing said waterworks shall be added thereto, and shall form a part of the capital invested, until the net revenue of said works amount to fifteen per centum as aforesaid; *and provided also*, that the City Council of New Orleans shall have the power annually to appoint a committee, who shall have access to such of the books of said bank as relate to the said Waterworks Company, and may make such extracts from the same as they may think necessary; *and provided further*, that at the end of five years after the first appropriation, the said net profits shall not exceed ten per cent.—and in case said profits should exceed fifteen per centum during the first five years, and ten per centum afterwards, as provided for in this section, the City Council shall have the power to reduce the price of water, in such a manner and in such a proportion, that the profits should never exceed the above mentioned rates.

* * * * * *

SECT. 21. *Be it further enacted, etc.*, That within the first thirty days that the books are opened for subscription, the corporation of the city of New Orleans may subscribe for five thousand shares of the capital stock of said company, not subject to deduction;

and for which the said company may receive the bonds of the mayor, aldermen and inhabitants of New Orleans, redeemable in forty years, bearing an interest not exceeding five per centum per annum, payable half yearly.

SECT. 22. *Be it further enacted, etc.,* That if, agreeable to the twenty-first section of this act, the corporation of the city of New Orleans shall subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, then, and in that case, the City Council of New Orleans shall annually elect, by ballot, from the mayor, recorder and aldermen of said Council, two persons, who shall be members of the Board of Directors; and the stockholders shall only elect eleven instead of thirteen directors, as provided for in the third and sixth sections of this act, in which election the said City Council shall not vote as stockholders; *provided*, that nothing herein contained shall be so construed, as in any manner to impede, diminish or impair, the rights and powers granted to the City Council of New Orleans, and to the committee to be appointed by them annually, by virtue of the eleventh section of this act.

SECT 23. *Be it further enacted, etc.,* That the provisions of the thirteenth section of this act, relative to half yearly dividends, shall not be so construed as to apply to the stock, subscribed for and owned by the corporation of the city of New Orleans; the dividends arising from the shares so owned, shall be applied, first, to the payment of the interest on the bonds given to the Commercial Bank of New Orleans for the stock subscribed by the said corporation, and the surplus shall be passed to the credit of the said corporation, half yearly, at such times as dividends are payable to other stockholders, to be set apart as a sinking fund, applicable alone to the payment of the bonds of said corporation, when they shall become due, and the said corporation shall be allowed an interest of five per centum per annum on the same, by the Commercial Bank of New Orleans.

SECT. 24. *Be it further enacted, etc.,* That if the corporation of the city of New Orleans shall fail to subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, within the first thirty days the books are opened for subscriptions, the twenty-first, twenty-second and twenty-third sec-

tions of this act shall be considered null and void, and of no effect.

* * * * * *

SECT. 33. *Be it further enacted*, &c., That in the city of New Orleans, its suburbs, and adjoining lands laid out in town-lots, the company shall have the power of using the streets and public places, for the purpose of placing pipes to run the water: *Provided*, they do not obstruct the said streets longer than will be absolutely necessary for the said purpose, or for making any repair; *and provided* they restore the said streets to the same condition they were before, in as short a time as possible; that within the said limits, it shall not have power to place any pipe, or do any work upon any lot of ground, without the consent of the owner; and that out of the said city, its suburbs, and the lands laid out in town-lots, if the said company shall not be able to agree with the proprietor or proprietors of lots of ground through which it may be necessary to run the water, through pipes or otherwise, as the directors may deem expedient, for the purpose of introducing water into the said city and its faubourgs; or if such owner or owners shall be absent out of the State, or unknown, or shall, from incapacity, legal or otherwise, be precluded from making any contract or agreement in relation thereto, it shall and may be lawful, on the application of the president and directors of the Commercial Bank of New Orleans, for the judge of that judicial district of Louisiana wherein the city of New Orleans is, or may be hereafter, situated, to issue his warrants to the sheriff of the parish of Orleans, commanding

* * * * * *

SECT. 36. *Be it further enacted*, &c., That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its faubourgs, or shall change, alter, remove, injure or destroy, any work or part of a work made by the said company, or caused to be made, for the purpose of introducing water into the city of New Orleans and its faubourgs, under the authority of this act; or if any person shall alter, obstruct, change or polute, by any tan-yard, hog-stye, slaughter-house, dye-pot, or otherwise, the waters or streams which the said company shall hereafter in-

troduce, or shall be preparing to introduce into the city of New Orleans and its faubourgs, under the authority given and regulations prescribed by this act, such person or persons shall be indicted in the proper court for the trial of offences within the parish of New Orleans committed, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offence, and imprisoned for any time not exceeding seven years; such fine to be paid and applied to the use of said company.

* * * * * *

SECT. 38. *Be it further enacted*, &c., That the corporation of New Orleans shall be supplied by the said company, free of charge, with all water necessary for the extinguishment of fires and other public purposes; nor shall the city council be subjected to any charge for water furnished to supply the gutters of the said city and faubourgs; and that the said company, as they progress in laying acqueducts, shall place, free of any charge whatever, two hydrants of a proper construction, in front of each square, at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn, for extinguishing fires, for wetting, washing and watering the streets and gutters, and any other public purpose; that on the squares which do not front on the river, the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners; that the said hydrants shall be of a proper size and made so as at all times to furnish water for the fire engines, and purposes herein mentioned: it shall further be the duty of said company, to supply water for all the purposes herein mentioned, at all times, during the continuance of this charter, unless prevented by some unavoidable accident; and in case such shall occur, the repairs shall be made and the water again furnished at the expiration of the necessary delay; and the said company shall supply a sufficient quantity of clear, pure and wholesome water for the use of the inhabitants, within the limits aforesaid, at the elevation of fifteen feet, when the same may be required. *Provided however*, that said hydrants shall be under the control of the Commercial Bank.

* * * * *

SECT. 41. *Be it further enacted*, &c., That the second section

of this act shall not be so construed as to apply to the payment of ten dollars per share *at the time of subscribing*, on the stock subscribed for by the City Council of New Orleans. But said corporation shall, within thirty days from the organization of the first board of directors of the Commercial Bank of New Orleans, execute in the form required by the directors, the bonds of the mayor, aldermen and inhabitants of New Orleans, to the order of the president and directors of said company, for the full amount of stock subscribed by the corporation aforesaid, say five hundred thousand dollars, bearing an interest of five per centum per annum, payable in forty years, the interest on said bonds to be paid semi-annually; and should the bonds taken by said company, from the corporation aforesaid, be sold at a premium, such premium or excess, over and above their par value, shall form a part of the sinking fund, as provided for in the twenty-third section of this act.

SECT. 42. *Be it further enacted, etc.*, That when, after the expiration of thirty-five years, the said corporation of New Orleans shall be inclined to buy the said waterworks from the Commercial Bank of New Orleans, the price shall be fixed by arbitrators, five of whom shall be chosen by the president and directors of the Commercial Bank of New Orleans, and five by the City Council of New Orleans; said arbitrators not to be stockholders in said company, nor members of the City Council of New Orleans. Said arbitrators shall take into consideration the *value* of the waterworks and grounds appertaining thereto, for supplying the city and faubourgs of New Orleans with water by the said company; and if they agree, and so report, in *writing*, their award shall be binding on the respective parties. But in case of disagreement, the judge of the judicial district court in which the said waterworks are situated, shall appoint as umpires, five disinterested individuals as above, whose decision and award, *in writing*, reported to the judicial district court aforesaid, shall be binding and conclusive. And the amount so agreed upon, shall be payable in the bonds of the mayor, aldermen and inhabitants of New Orleans, bearing an interest of five per centum per annum, interest payable thereon semi-annually, and redeemable in not less than ten, nor more than thirty years from the day on

which said award shall be signed, and the said waterworks delivered over to the said corporation of New Orleans.

SECT. 43. *Be it further enacted, etc.*, That in case the mayor, aldermen and inhabitants of New Orleans shall deem it unadvisable or inexpedient to purchase the said waterworks from the Commercial Bank of New Orleans, as provided for in sections four and forty-two, and so notify the Commercial Bank of New Orleans thereof, at any time within eighteen months thereafter, the bonds given by the mayor, aldermen and inhabitants of New Orleans, for the amount of stock owned by the corporation of New Orleans, shall be renewed by the Commercial Bank of New Orleans for twenty-five years, on the same terms and conditions as provided for in sections twenty-one and forty-one of this act; *provided, however*, the amount formed by the sinking fund herein provided, shall be applied to the payment of said bonds, as far as it will go, and the bonds only renewed for such balance as may not be made up by the sinking fund aforesaid.

SECT. 44. *Be it further enacted, etc.*, That the corporation of New Orleans shall and may continue to make use of the waterworks now owned by the said corporation, for supplying the city with water, until the Commercial Bank of New Orleans shall be so far advanced with the works contemplated by this act, as will enable them to furnish water in such parts of the city as are now supplied by the works at present in operation; or until, by the progress of the waterworks so to be constructed, it may become necessary to remove the pipes at present in use, should such removal be found necessary.

SECT. 45. *Be it further enacted, etc.*, That the said company, in constructing the waterworks aforesaid, shall purchase from the mayor, aldermen and inhabitants of New Orleans, the pipes already laid down by said corporation, at such price as may be agreed upon by seven arbitrators, of whom the superintendent of the works proposed to be constructed, shall be one, and three to be chosen by the president and directors of the Commercial Bank of New Orleans, and three by the City Council of New Orleans, whose award, as to the *value* of said pipes, for the use of said company, shall be final.

SECT. 46. *Be it further enacted, &c.*, That it shall be the duty of the said Bank, to sell to the best advantage, the bonds received of the mayor, aldermen and inhabitants of the city of New Orleans, for their subscription, and to contract for the payment of the interest thereof, at such place or places as the president and directors may deem expedient. *Provided* that any additional charge, loss or exchange, or other expenses, consequent upon the sale of the bonds, or payment of such interest in any other place than New Orleans, shall be wholly defrayed by the Bank.

SECT. 47. *Be it further enacted, &c.*, That during the first term of thirty days, in which the subscription books shall remain open, as provided for in section first, no person shall be allowed to subscribe, who is not a citizen of the United States and a resident of this State, of which facts the commissioners shall be the sole judges; and that all subscriptions shall be made in person, or under a notarial power, executed by not more than three persons. *Provided, however*, this section shall not be so construed as to prevent subscriptions, after the first term of thirty days, either in person or by proxy, should the books be re-opened. And that no individual, commercial firm or corporation, shall be allowed a greater number of votes than one hundred, for the election of directors of said Bank, either by proxy or otherwise, in his, her or their name.

SECT. 48. *And be it further enacted, &c.*, That the president and directors of the Commercial Bank of New Orleans, may, at such time as they may deem it expedient, establish agencies at such places as they may think proper, for the purchase of bills of exchange and sale of Bank checks; and may appoint such officers as they may think proper for the administration of the same.

(Signed) ALCEE LABRANCHE,
Speaker of the House of Representatives.

(Signed) C. DERBIGNY,
President of the Senate.

Approved April 1, 1833.

(Signed) A. B. ROMAN,
Governor of the State of Louisiana.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 883.

THE NEW ORLEANS WATERWORKS COMPANY, APPELLANT,

versus

ROBERT E. RIVERS, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

PRINTED ARGUMENT OF APPELLEE.

G. L. HALL,
Of Counsel for Appellee.

E. C. Hunt, Stationer, 51 Camp Street, N. O.

Supreme Court of the United States.

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Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

PRINTED ARGUMENT OF APPELLEE.

The complainant seeks to enjoin the appellee from getting water from the Mississippi river for the use of his house, situated a short distance from the bank of that great river, in the city of New Orleans, by bill in equity, claiming the *exclusive* right to supply every citizen of New Orleans with water.

This claim is based upon section 5, of Act No. 33 of the extra session of the Legislature of Louisiana of 1877, and on that portion of it which reads, "*that it* (The New Orleans Waterworks Company) *shall have for*

fifty years from the passage of this act the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river," and because of ordinance No. 8148, administration series, of the Common Council of the city of New Orleans, adopted on November 15, 1882, to be found in the printed transcript of this record, page 11, wherein this defendant and appellee, *the lessee of the St. Charles Hotel, of the city of New Orleans, was granted the "right of way and privilege to lay a water pipe from the Mississippi river, at any point opposite to the head of Common or Gravier streets, through either of those streets to said hotel, its front and side streets, with all needed attachments and appurtenances, and to distribute said water through said hotel, as said R. E. Rivers, or lessee, may desire from said pipes, the pipes to be put at a depth of three feet under the surface of the said streets, to be of iron, and of not more than — inches in diameter.*"

In that ordinance it is provided that "the said pipes and all attachments thereto in said streets, be arranged and placed under the supervision and approval of the city surveyor," and further, "that the pavement and streets to be relaid to the satisfaction of the Administrator of Improvements and the City Surveyor."

This ordinance shows the careful enforcement of police regulations by the city of New Orleans in providing for the welfare of its whole people by empowering the Administrator of Improvements and City Surveyor to supervise and have the water-pipe and attachments placed and arranged satisfactorily.

To complainant's bill defendant demurred, and showed for cause:

1st. "*That this Honorable Court is without jurisdiction ratione personæ, all parties,* plaintiffs and defendants, and, as appears upon the face of plaintiff's bill filed herein, *are citizens of the State of Louisiana.*

2d. "*That this Honorable Court is without jurisdiction ratione materiæ, the matter in dispute,* as appears upon the face of plaintiff's bill, *is not sufficient to give this Honorable Court jurisdiction.*

3d. "*That there is no cause of action or complaint, no matter of equity set forth and alleged in plaintiff's bill, and were all the allegations in said bill contained, true as therein stated and set forth, which defendant does not admit, the said bill contains not any matter of equity whereon to sustain such writ of injunction as is sought and prayed for in said bill, nor hath plaintiff in and by said bill, stated and made such a case as doth or ought to entitle said plaintiff in this Honorable Court to any relief from or against this defendant, touching the matters contained in said bill, or any of such matter.*" See transcript of Record, page 15.

This demurrer was twice argued—the last time before the Circuit and District judges sitting together—in view of the decision of this Honorable Court in the case of the Butchers' Union Slaughter House and Live Stock Landing Company vs. the Crescent City Live Stock Landing and Slaughter House Company, 111 U. S., page 746. See transcript of Record, page 17.

The decree of the Court to be found on page 23, is, "*that the demurrer of the defendant be sustained, and the bill of complaint herein be dismissed; and that the defendant have and recover his costs to be taxed.*"

Section 18 of the Acts of the extra session of the Legislature of Louisiana No. 33 of 1877, is: "*Be it further enacted, etc., That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the privilege of laying pipes to the river, exclusively for his own or their own use.*"

Article 258 of the Constitution of Louisiana of 1879 is: "All rights, actions, prosecutions, claims and contracts, as well of individual as of bodies corporate, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, shall continue as if the said constitution had not been adopted. *But the monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby repealed.*"

Much of appellant's brief does not concern us, or bear upon the issues raised. The city of New Orleans may have to make settlement with complainant concerning the obligations, stock and bonds of the New Orleans Waterworks Company mentioned, but the risk of obligations must be taken in all agreements, and one should not accept or rely upon a promise or obligation that it is impossible to make good.

If this exclusive right of the New Orleans Waterworks Company to supply each person in the city of New Orleans with all the water he uses for fifty years is to be

construed as preventing him from getting water for his own use from the never-failing Mississippi that passes his door, filled to overflowing abundance, then it will be impossible to arrange for supplying one with water, and the water for the whole city on the day after the charter of the New Orleans Waterworks Company expires. No one could get water from the Mississippi river for his own use, if the New Orleans Waterworks Company should become bankrupt, or fail to furnish a sufficient supply

Grant such a monopoly over the water that comes freely down that great valley, and a monopoly could next be granted to some corporation in New Orleans, compelling a citizen to get air through pipes from the shores of the Gulf of Mexico, or that all the meat used in that city must come from Galveston, and all the breadstuffs from St. Louis and clothing from New York, and if an exclusive right for fifty years then or for two hundred and fifty years could be granted.

This complainant has sought to enjoin various parties from getting water from the Mississippi river for their own use by proceedings in the State courts of Louisiana, and in every instance all of the courts applied to, including the Supreme Court of Louisiana, the highest court of law or equity in the State, decided against the exclusive right claimed by the New Orleans Waterworks Company. One of the defendants in those cases, the Louisiana Sugar Refining Company, has, by leave of this Honorable Court, filed a brief herein. In that cause, 947 of the docket of this honorable court, the counsel for the defendant claims that the questions in-

volved will be decided by and control the issues in this cause.

It is averred by complainant that Art. 258, of the conststution of Louisiana for 1879, abolishing monopolies, violates and is repugnant to the Constitution of the United States, and that complainant and defendant are citizens of the State of Louisiana. The contest between these two citizens of Louisiana should be first tried by the State courts, and might finally be taken to this Honorable Court by writ of error, under the allegationthat the article of the State Constitution was a violation of the Constitution of the United States. The second ground of demurrer, as to the amount in dispute giving jurisdiction, is submitted on the face of the bill.

A monopoly is defined "to be an institution or allowance from the soverign power of the State, by grant, commission or otherwise, to any person or corporation, for the sole buying, selling, making, working or using of anything whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty they had before, or hindered in their lawful trade."

It is no doubt true that the New Orleans Water Works Company obtained their charter under circumstances and conditions that created most serious obligations on the part of the city of New Orleans. But could the Legislature of Louisiana so bind the State of Louisiana as to prevent its people by an exercise of sovereign power, through a convention of its people,

duly convened, from adopting a Constitution and form of government?

If so, it could give an exclusive right to the Louisiana State Lottery to maintain its existence, in rich exclusion of all others, and the people of Louisiana could not by constitutional convention get rid of such a lottery. It could do the same thing with slaughterhouses, and the constitutional convention could not abolish such monopolies.

In the case of the Butcher's Union Slaughterhouse and Live Stock Landing Company vs. The Crescent City Live Stock Landing and Slaugherhouse Company, 111 U. S. Reports, p. 746, the question presented in the demurrer has been fully considered and decided. It was held that the Legislature of Louisiana had not granted a charter to a Slaughterhouse Company with exclusive rights that the constitutional convention of that State in 1879, could not and did not abolish its monopoly feature.

Mr. Justice Miller, as the organ of this court, in his opinion, says: "An examination of that statute, especially of its fourth and fifth sections, leaves no doubt that it did grant such an exclusive right."

"The fact that it did so, and that this was conceded, was the basis of the contest in this court, in the *Slaughter-house cases*, 16 Wall. 36, in which the law was assailed as a monopoly forbidden by the thirteenth and fourteenth amendments to the Constitution of the United State, and these amendments, as well as the fifteenth, came for the first time before this court for construc-

tion. The constitutional power of the State to enact the statute was upheld by this Court. This power was placed by the court in that case expressly on the ground that it was the exercise of the police power which had remained with the States in the formation of the original Constitution of the United States, and had not been taken away by the amendments adopted since."

When the court comes to consider the abolishing of this same monopoly by the constitution of Louisiana of 1879, it says, on p. 749: "No one can examine the provisions of the act of 1869, with the knowledge that they were accepted by the Crescent City Company, and so far acted on that a very large amount of money was expended on a vast slaughter-house and an equally extensive stockyard and landing-place, and hesitate to pronounce that in form they have all the elements of a contract on sufficient consideration."

"It admits of as little doubt that the ordinance of the city of New Orleans, under the new Constitution, impaired the supposed obligation imposed by those provisions on the State, by taking away the exclusive right of the company granted to it for twenty-five years, which was to the company the most valuable thing supposed to be secured to it by the statutory contract."

"We do not think it necessary to spend time in demonstrating either of these propositions. We do not believe they will be controverted." * * * * *

Farther on, in considering the contract by charter, and the right of the Constitution of 1879 to abolish it, the court says: "While we are not prepared to say

that the Legislature can make valid contracts on no subject embraced in the largest definition of the police power, we think that, in regard to two subjects so embraced, it cannot by any contract limit the exercise of those powers to the prejudice of the general welfare. These are the *public health* and *public morals*. The preservation of these is so necessary to the best interests of social organization that a wise policy forbids the legislative body to divest itself of the power to enact laws for the preservation of health and the repression of crime."

"It cannot be permitted that, when the Constitution of a State, the fundamental law of the land, has imposed upon its Legislature the duty of guarding, by suitable laws, the health of its citizens, especially in crowded cities, and the protection of their persons and property by suppressing and preventing crime, that the power which enables it to perform this duty can be sold, bargained away, under any circumstances, as if it were a mere privilege which the legislator could dispose of at his pleasure."

"This principle has been asserted and repeated in this court in the last few years in no ambiguous terms."

The following cases are then quoted and commented upon: Boyd vs. Alabama, 94 U. S., 645; Moon vs. The State, 48 Miss., 147; Metropolitan Board of Excise vs. Barrie, 34 N. Y., 657, 663; The Beer Company vs. Massachusetts, 97 U. S., 25, 28.

Fertilizing Company vs. Hyde Park, 97 U. S., 659.

Stone vs. Mississippi, 101 U. S., 814.

These cases are strong ones, quite in point and will stand as correct interpretations of the subject while our government lasts. If the slaughtering of animals concerns the public health, of much greater concern to the public health is the free use of water. It is the right to get and use water for one's self not the vending of water that is claimed. Can any one be prevented from getting from the Mississippi river the water he wishes for his own use, if he does not thereby injure his neighbors getting water? Is it not an inalienable right of every citizen of the city of New Orleans?

Has a citizen living on its bank or contiguous to the river a better right to use it than one living a square or six squares from it?

This complainant is seeking to prevent the Louisiana Sugar Refinery, in the city of New Orleans, from getting water from the Mississippi river for its own use, though there is no building or open street between its building and the river, as will appear by the transcript of that record and brief of counsel filed herein by leave of court. See also the 35th La. An., p. 1111. In another case depending on the Louisiana Sugar Refinery case, if not directly before this court by writ of error, the Louisiana Ice Company with factory situated flush on the water's edge of the bank of that river, in the upper part of the city of New Orleans, has the same litigation at the hands of the New Orleans Waterworks Company because the ice company seeks to get water from the Mississippi river to make ice from in that hot climate. Counsel for the Sugar Refinery case present the subject

of water for use and water to vend with much clearness and we will not renew the argument so forcibly presented in that brief.

To monopolize the use of the Mississippi river water by legislative charter of Louisiana, in the city of New Orleans, where it rolls by with a lavish supply of that which is as free and ~~water~~ as air, would be to give a few stockholders in the job exclusive benefits. It is an odious idea. It violates common law. It would abridge the priviliges of other citizens.

In the concurring opinions in 111 U. S., 766, it is justly said: "Monopolies are the bane of our body politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in corners in the stock market and produce market, and in many other ways."

Shall these monopolies be carried, by legislative enactment, into the vocations, callings and necessities of life, so that trades, food, water and air may be absorbed by a favored few and disposed of to individuals of a community at great profit?

The charter of the complainant company gives an exclusive right to supply the people of New Orleans with water from the Mississippi river or any other stream, unless the person residing contiguous to the river gets it for his own use. What a singular discrimination Have people a few squares off less use for water? Would they be more healthy with a restricted water supply? Must they go unwashed and thirsty? They

cannot all live contiguous to the Mississippi river in that large city.

Mayor, etc., vs. Commissioners Spring Garden, 7 Barr.(Pa.) 363; Wadsworth vs. Tillotson, 15 Conn., 366.

We respectfully submit that the demurrer should be maintained, the bill dismissed, and the decree of the Circuit Court, dismissing the bill, affirmed.

Respectfully submitted,

G. L. HALL,

Of Counsel for Appellee.

IN THE

Supreme Court of the United States.

No. 883.—October Term, 1884.

The New Orleans Water Works Company, Appellant,

vs.

Robert E. Rivers, Appellee.

And now comes Alfred Goldthwaite, Esq., attorney for the Louisiana Sugar Refining Company, and shows to this Honorable Court that the said Louisiana Sugar Refining Company is the defendant in error in a certain cause pending in this Honorable Court, brought by a writ of error from the Supreme Court of the State of Louisiana, in a certain cause wherein the New Orleans Water Works Company was appellant and the Louisiana Sugar Refining Company et al., were appellees, which said cause is numbered 947 on the docket of this Honorable Court for the October term, 1884. Appearer shows that the solicitors have entered into a stipulation, filed in this Court, to submit this cause as provided in Rule twenty of the Rules of the Supreme Court, the defendant and appellee to have twenty days of the term of the Supreme Court, after delivery of copy of printed record and printed argument of appellant, to respond to the same.

Appearer further shows that the questions involved in this cause will decide and control the questions at issue in